

INDIAN CONSTITUTIONAL DOCUMENTS
1757—1939
VOLUME III : 1917—1939

By the same Author

RAJPUT STUDIES

PESHTWA MADHAV RAO I

ANGLO-SIKH RELATIONS

ANNEXATION OF BURMA

THE EASTERN FRONTIER OF BRITISH INDIA

THE CABINET MISSION IN INDIA

THE CONSTITUENT ASSEMBLY OF INDIA

THE MAKING OF THE INDIAN CONSTITUTION

INDIAN CONSTITUTIONAL DOCUMENTS

1757—1939

EDITED BY

ANIL CHANDRA BANERJEE, M.A., Ph.D.
Premchand Roychand Scholar, Mouat Medallist,
LECTURER IN HISTORY, CALCUTTA UNIVERSITY

IN THREE VOLUMES
VOLUME III: 1917—1939

A. MUKHERJEE & CO. :: CALCUTTA

FIRST EDITION : *August*, 1946

SECOND EDITION : *March*, 1949

Price Rupees Twelve only

Published by A. MUKHERJEE, 2, College Square, Calcutta.
Printed by B. N. BAGCHI, ARTHIK JAGAT PRESS,
122, Bowbazar Street, Calcutta.

To
The Makers of
THE FUTURE CONSTITUTION
OF INDEPENDENT INDIA

PREFACE TO THE FIRST EDITION

This volume, like the preceding one, is intended to facilitate the study of Indian constitutional history. I have incorporated in it documents of various types: statutes, speeches, official statements, treaties, extracts from books, etc. The development of a constitutional system and the ramifications of an ever-growing administrative machinery cannot be understood simply from an analysis of legislative enactments. I have, therefore, tried to collect materials which an orthodox constitutional lawyer would hesitate to use but which historians can hardly afford to ignore. The abundance of materials has made it impossible for me to include extracts from the Government of India Acts, 1919 and 1935. I have also found myself unable to provide space for documents relating strictly to administrative problems. Towards the close of the period covered by this volume the problem of the States became closely associated with the constitutional problem in British India. As in the preceding volume, I have included some documents relating to the Indian States. Lack of space, however, is responsible for the exclusion of documents relating to the demands of the States people and the introduction of reforms in some of the States. For the convenience of the general reader I have added some notes and references and also a brief introductory survey. I hope they will be of some assistance in understanding the documents, although it is obvious that it is not my purpose to give an exhaustive summary of Indian constitutional history.

This volume ends with the frustration created by the Simla Conference of 1945. I have deliberately omitted any reference to the work of the Cabinet Mission (March-June, 1946). I hope, in common with all my fellow-countrymen, that the Constituent Assembly which is soon going to meet will be able to give India freedom and peace. If it succeeds in ushering a new era in our national history, the constitutional historian will have to record its achievements in volumes not encumbered with the story of past failures.

A. C. BANERJEE

PREFACE TO THE SECOND EDITION

Indian Constitutional Documents was originally published in two volumes. The first volume covered the period 1757-1858; the second volume dealt with the constitutional developments in India under the British Crown (1858-1945). I have now found it necessary to reprint the book in a larger form. So I have divided it into three volumes: Volume I, 1757-1858; Volume II, 1858-1917; Volume III, 1917-1939. Documents relating to the years 1939-1945 have been transferred to my book *The Making of the Indian Constitution* which covers the period 1939-1947.

The present edition of this volume contains many new documents. Document nos. 5, 8, 9, 16, 17, 18, 19, 20, 21, 33, 41, 45, 47, 51, 53, 55, 56, 57, 63, 69, 70 have been inserted for the first time. Some new extracts have been added to Document nos. 12, 24, 32, 36, 37, 49, 52, 54. Introductory notes have been added to some of the documents. The *Introduction* has been partly re-written, but its scope remains unchanged. I hope this edition will be more useful to its readers in studying the period 1917-1939 than its predecessor.

A. C. BANERJEE

TABLE OF CONTENTS

<i>Subject</i>	<i>Page</i>
Introduction	xv—xxxi
Documents	1—477
1. Mr. Montagu's Declaration, 1917	1—3
2. Mont-Ford Report on Goal of Political Evolution in India	3—6
3. Mont-Ford Report on Dyarchy	6—12
4. Mont-Ford Report on Communal Electorates	12—17
5. Mont-Ford Report on Devolution to Provincial Governments	17—22
6. Government of India on Mont-Ford Report	22—29
7. Simon Commission on Differences between the Mont Ford Report and the Government of India Act, 1919	29—31
8. Government of India Act, 1919	31—52
9. Simon Commission on Central and Provincial Subjects under Act of 1919	53—65
10. Mr. Montagu on the Government of India Bill, 1919	65—69
11. The Crewe Committee on the 'Home' Administration of Indian Affairs, 1919	69—77
12. Indian National Congress on Mont-Ford Reforms	77—96
I. Resolution of the Congress, Special Session, Bombay, 1918	77—81
II. Resolution of the Congress, Delhi Session, 1918	81—82
III. Presidential Address of Pandit Madan Mohan Malaviya, Delhi, 1918	82—83
IV. Resolution of the Congress, Amritsar Session, 1919	83—84
V. Presidential Address of Pandit Motilal Nehru, Amritsar, 1919	84—85
VI. Undelivered Presidential Address of Mr. C. R. Das, 1921	85—91
VII. Presidential Address of Mr. S. Srinivasa Aiyangar, Gauhati, 1926	91—96
13. Instrument of Instructions to the Governor-General, 1921	96
14. Indian National Congress and the Reformed Legislatures	96—98
I. Presidential Address of Mr. C. R. Das, Gaya, 1922	96—97
II. Presidential Address of Pandit Jawaharlal Nehru, Lahore, 1929	97—98
15. Indian National Congress and the Muslims	98—106
16. Dyarchy at work, 1921-1924	106—115
I. Extracts from Majority Report of Reforms Enquiry Committee	106—113
II. Extracts from Minority Report of Reforms Enquiry Committee	114—115
17. Work of Central Legislature under Act of 1919	116—124
18. Relations between Central and Provincial Governments under Act of 1919	124—131

<i>Subject</i>	<i>Page</i>
✓19. Relations of Government of India with Secretary of State under Act of 1919	131—136
20. The Government of India on Communal Electorates under Act of 1919	136—146
21. Debate on National Demand in Indian Legislative Assembly, 1924	146—155
I. Speech of Sir Malcolm Hailey, February 8, 1924 ..	148—150
II. Speech of Pandit Motilal Nehru, February 8, 1924 ..	150—155
22. Lord Irwin on the Relations between the Central Government and the Central Legislature, 1926 ..	155—156
23. Lord Irwin on Parliamentary Supremacy, 1927 ..	156—157
24. Indian National Congress on Simon Commission, 1927 ..	157—160
I. Resolution, Madras Session, 1927 ..	158—159
II. Presidential Address of Dr. M. A. Ansari, Madras, 1927 ..	159—160
25. Simon Commission on Relations between the Secretary of State and the Government of India ..	160—161
26. Simon Commission on Indirect Influence of the Central Legislature on the Government of India ..	162
27. Simon Commission on Governor-General's Executive Council ..	162—163
28. Simon Commission on the working of Dyarchy ..	163—169
29. Recommendations of the Nehru Committee, 1928 ..	169—175
30. Lord Irwin on the Double Duty of Modern Viceroy, 1929 ..	175
31. Lord Irwin on the Political Goal of India, 1929 ..	175—179
I. Address to the European Association, Calcutta, December, 1928 ..	175—177
II. Declaration, October 31, 1929 ..	177
III. Address to the Legislative Assembly, January, 1930 ..	177—179
32. Indian National Congress and the Goal of Independence ..	179—187
I. Mahatma Gandhi's Speech, Nagpur Congress, 1920 ..	179
II. Presidential Address of Mahatma Gandhi, Belgaum Congress, 1924 ..	180
III. Resolution of the Congress, Madras Session, 1927 ..	180
IV. Resolution of the All-India Congress Committee, Delhi Session, 1928 ..	181
V. Presidential Address of Pandit Motilal Nehru, Calcutta Congress, 1928 ..	181—184
VI. Presidential Address of Pandit Jawaharlal Nehru, Lahore, 1929 ..	184—186
VII. Resolution of the Congress, Lahore Session, 1929 ..	186
VIII. Resolution of the Congress Working Committee, January 26, 1930 ..	186—187
IX. Presidential Address of Sardar Vallabhbhai Patel, Karachi, 1931 ..	187
X. Resolution of the Congress, Karachi Session, 1931 ..	187
XI. Resolution of the Working Committee, Sept., 1934 ..	187
33. Indian National Congress on the First Round Table Conference, 1931 ..	188—189

<i>Subject</i>	<i>Page</i>
34. Mahatma Gandhi at the Round Table Conference, 1931 ..	189—197
35. Work Done by the Round Table Conference ..	197
I. Speech of Sir Tej Bahadur Sapru, January 19, 1931 ..	197
II. Speech of Sir Samuel Hoare, December 24, 1932 ..	197—199
36. The Communal Award	199—205
I. Statement of Mr. Ramsay MacDonald, December 1, 1931	199—200
II. Mr. Ramsay MacDonald's Award, August 4, 1932 ..	200—203
III. Mr. Ramsay MacDonald's Statement	203—204
IV. The Poona Pact, September, 1932	204—205
37. Indian National Congress and Concessions to Muslims ..	206—213
I. Resolution, Madras Session, 1927	206—207
II. Resolution of the Congress Working Committee, July, 1931	207—210
III. Resolution of the Congress Working Committee, June, 1934	210—211
IV. Resolution of the All-India Congress Committee, Bombay, August, 1936	211—212
V. Resolution of the Congress Working Committee, October, 1937	212—213
38. Joint Parliamentary Committee on Indian Federation ..	213—220
39. Joint Parliamentary Committee on Provincial Autonomy ..	220—222
40. Joint Parliamentary Committee on Relations between Governor and Ministers	223—224
41. Debate in Indian Legislative Assembly on Report of Joint Parliamentary Committee, 1935	224—232
I. Speech of Mr. Bhulabhai J. Desai, February 4, 1935 ..	225—228
II. Speech of Mr. M. A. Jinnah, February 7, 1935 ..	228—232
42. Indian National Congress on Reforms of 1935	232—238
43. Sir Samuel Hoare on the Government of India Bill, 1935 ..	238—254
44. Mr. Attlee on the Government of India Bill, 1935	254—262
45. Extracts from the Government of India Act, 1935	262—320
46. Instrument of Instructions to the Provincial Governor ..	321—325
47. Indian National Congress and Rejection of Act of 1935 ..	325—327
I. Resolution of the Congress, Lucknow Session, 1936 ..	325
II. Resolution of the All-India Congress Committee, Calcutta October, 1937	326
III. Resolution of the Congress, Haripura Session, 1938 ..	326—327
48. Lord Linlithgow on Relations of Governors with Ministers, 1937	329—342
49. Resignation of two Congress Ministries, 1938	342—347
I. Statement of Lord Linlithgow, February 22, 1938 ..	343—346
II. Resolution of the Congress, Haripura Session, 1938 ..	346—347
III. Statement of Mahatma Gandhi	347
50. Lord Linlithgow on Provincial Autonomy	348—349
I. Speech, March 15, 1937	348
II. Speech, December 19, 1938	348—349
51. Mr. Jinnah on Muslim claims. 1937-1938	349—356

<i>Subject</i>	<i>Page</i>
I. Presidential Address All-India Muslim League, Lucknow Session, October, 1937 ..	349—354
II. Presidential Address, All-India Muslim League, Patna Session, December, 1938 ..	354—356
52. Indian National Congress and The War ..	356—367
I. Resolution of the Working Committee, September 14, 1939	356—361
II. Resolution of the Working Committee, October 22, 1939	361—363
III. Instructions to Ministries and Legislative Parties	363
IV. Resolution on war crisis in Provincial Assemblies	364
V. Resolution of the Working Committee, Allahabad, November 23, 1939	364—367
53. The Muslim League on the War	367—371
54. The British Government and the War ..	371—391
I. Statement of Lord Linlithgow, October 17, 1939	371—382
II. Statement of Lord Zetland, House of Lords, October 18, 1939	382—388
III. Statement of Lord Linlithgow, November 5, 1939	388—391
55. Mahatma Gandhi on Constituent Assembly, 1939	391—394
56. Mr. Jinnah on "Deliverance Day", 1939 ..	394—401
I. Appeal for observance of "Deliverance Day", Bombay, December 2, 1939 ..	394—396
II. Statement to the Press on "Deliverance Day"	396—401
57. Mr. Jinnah on the Congress Demand for a Constituent Assembly, 1939	401—404
Appendix A: Documents on Indian States	405-474
58. Mount Ford Report on Indian States	405—411
59. Lord Reading's Letter to the Nizam, 1926	411—415
60. Constitutional Importance of the Chamber of Princes ..	415—419
I. Extracts from Report of Simon Commission ..	415—418
II. Extracts from Report of Butler Committee ..	418—419
61. The Nehru Report on the Indian States ..	419—434
62. Joint Opinion of the Princes' Lawyers, 1928 ..	434—435
63. The Indian States and the British Crown ..	435—442
64. The Indian States Committee on Paramountcy, 1929 ..	443—457
65. The Princes at the Round Table Conference ..	457—463
I. Speech of Maharaja of Bikaner, November 17, 1930	457—461
II. Speech of Mr. Ramsay MacDonald, Nov. 21, 1930 ..	461
III. Speech of Sir Manubhai Mehta, December 23, 1932 ..	461—463
66. Mahatma Gandhi on the Indian Princes, 1931—1939 ..	463—465
I. Talk with Mr. H. N. Brailsford in London, October, 1931	463
II. 'Harijan', July 9, 1933	463—464
III. Articles written in 1939	464
IV. 'Harijan', December 16, 1939	464—465

<i>Subject</i>	<i>Page</i>
67. Indian National Congress on the Indian States, 1936-1939	465-469
I. Resolution, Lucknow Session, 1936 ..	465
II. Resolution, Haripura Session, 1938 ..	465-467
III. Resolution of the Working Committee, Dec., 1938	467-468
IV. Resolution, Tripuri Session, 1939 .	468-469
68. Lord Linlithgow on the Indian States, 1937-1939 .	469-472
I. Speech, February 14, 1937 .. .	469
II. Speech, December 19, 1938 .. .	469-470
III. Speech, March 1, 1939 .. .	470
IV. Speech, March 4, 1939 .	470
V. Speech, March 13, 1939 .. .	470-471
VI. Speech, August 21, 1939 .	471-472
69. Administration of Indian States .. .	472-474
Appendix B:	
70. Constitution of the Indian National Congress .	475-477
INDEX ..	478-480

INTRODUCTION

The Mont-Ford Reforms

The Congress-League Scheme¹, which followed the agreement between the Indian National Congress and the Muslim League, had many defects and was probably unworkable,² but it undoubtedly increased the strength of the Congress and made it necessary for the British Government to listen to its demands. There was, as yet, no question of struggle, violent or non-violent, for the achievement of Swaraj; self-government was expected to come through 'progressive improvement in our mental, moral and material condition'.³ But the growing strength of the Indian nationalist movement and the part played by India in the Great War led the British Government to survey the Indian problem, in Asquith's words, 'from a new angle of vision'. The conclusion formed by the British Government was put in the Montagu-Chelmsford Report in the following words: "Indians must be enabled in so far as they attain responsibility to determine for themselves what they want done".

The Declaration⁴ of August 20, 1917, was 'revolutionary'⁵ in the sense that it promised responsible government 'in the familiar British way'. It was a clear repudiation of the Morley-Minto policy, which had made no concession to the Congress demand for self-government within the British Empire.⁶ It was 'a declaration of belief in the philosophy of liberalism'. It was, we are told, based on the idea that liberty alone fits men for liberty.⁷ But the machinery devised in accordance with this 'belief in the philosophy of liberalism' was hardly calculated to pave the way to liberty. The result was that the Act of 1919⁸ was accepted by the Moderates to whom the mere recognition of India's 'eventual'⁹ right to self-government was a great step

1 See *Indian Constitutional Documents*, Vol. II, pp. 289-295.

2 See *Indian Constitutional Documents*, Vol. II, pp. 296-298.

3 See *Indian Constitutional Documents*, Vol. II, p. 288.

4 Document No. 1.

5 Coupland, *The Constitutional Problem in India*, Part I, pp. 53-54.

6 See *Indian Constitutional Documents*, Vol. II, pp. 286-289.

7 Coupland, *The Constitutional Problem in India*, Part I, p. 54.

Document Nos. 2, 10.

8 Document Nos. 5, 7, 8, 9, 10, 13.

9 Document No. 2, p. 3.

forward, but it was rejected by the Congress¹ which was by far the most influential political body in India.

The Mont-Ford Reforms synchronised with a decisive stage in the evolution of the Congress from a constitutional body to a revolutionary organisation. The impact of the war, the tragedy at Amritsar, the Khilafat Movement which temporarily bridged the gulf between the Hindus and the Muslims—all these created a new situation and demanded a complete reorientation of policy and methods. Mahatma Gandhi brought from South Africa a spirit of direct struggle and a technique (*Satyagraha*) which, he claimed, never failed. The Congress was infected, and the fundamental change in its character was reflected in the first article of the constitution adopted in 1921 : "The object of the Indian National Congress is the attainment of *Swarajya* by the people of India by all legitimate and peaceful means".² Self-government *within* the British Empire was no longer the goal, 'though it was not expressly ruled out'.³ The goal was no longer to be attained solely through 'progressive improvement in our mental, moral and material condition' or through 'constitutional' means. Then followed what Coupland describes as 'The Revolt of the Congress'.

Of all the defects of the Act of 1919 particular attention may be directed to Dyarchy,⁴ absence of even partial Responsible Government at the Centre,⁵ and consolidation of separate electorates.⁶ Dyarchy certainly failed to satisfy the Indian people. Those who accepted it found that it was too complicated to be smoothly worked. The Central Legislature harassed the Executive instead of controlling and influencing it. The consolidation of separate electorates made it difficult for Hindus and Muslims to work together in the political field and steadily destroyed the communal harmony arising out of the Khilafat Movement.

Revision of Mont-Ford Reforms

The opposition to the Act of 1919 did not soon exhaust its force; on the other hand, it became gradually stronger and more

1 Document Nos. 6, 12, 14, 21.

2 Document No. 70.

3 Coupland, *The Constitutional Problem in India*, Part I, p. 67.

4 Document Nos. 3, 16, 28.

5 Document Nos. 17, 22, 26.

6 Document Nos. 4, 20.

effective. On February 18, 1924, the Central Legislative Assembly carried a resolution at the instance of Pandit Motilal Nehru, demanding a Round Table Conference for framing a constitution for India.¹ Owing to the policy of obstruction pursued by the Swarajists² no stable Ministry could be formed in Bengal and the Central Provinces. The Government of India partly responded to public opinion by appointing the Reforms Enquiry Committee under the Chairmanship of Sir Alexander Muddiman.³ The response of the British Government took the shape of the all-white Simon Commission. In spite of the boycott organised by the Congress⁴ the Simon Commission carried on its investigations which were ultimately summarised in its Report.⁵ Meanwhile the Congress was changing its creed to complete independence⁶ although the Nehru Committee recommended Dominion Status⁷ and the atmosphere in the country was changing for the worse.

In October, 1929, the British Government accepted Sir John Simon's suggestion of summoning a conference of representatives of British India and the Indian States. The deliberations of the Round Table Conference might have been more useful and practical had it been a smaller and homogeneous body. The emergence of the Federal idea as a practical solution of the Indian constitutional problem was the only tangible achievement.⁸ Mahatma Gandhi's appeal to trust the Congress⁹ found no response, and his failure to solve the communal problem¹⁰ led to Ramsay MacDonald's "Communal Award"¹¹ and the Poona Pact. Thus the system invented in 1906 was consolidated and extended in 1932. The proposals of the British Government (embodied in a White Paper published in 1933) were scrutinised by a Joint Parliamentary Committee presided over by Lord Linlithgow. The Government of India Bill based on the White Paper and

1 Document No. 21.

2 Document No. 14.

3 Document No. 16.

4 Document No. 24.

5 Document Nos. 7, 9, 25, 26, 27, 28.

6 Document No. 32.

7 Document No. 29.

8 Document Nos. 35, 64.

9 Document No. 34.

10 Document No. 37.

11 Document No. 36.

the Report¹ of this Committee became an Act² on August 2, 1935.

The Act of 1935

It is interesting to compare Sir Samuel Hoare's defence³ of the Act of 1935 with Mr. Attlee's criticism⁴, in view of the fact that twelve years later it fell to the latter's lot to modify the traditional British policy towards India. In India the Act proved unsatisfactory to all important parties.⁵ The Congress point of view⁶ was clearly expressed in the sober and analytical address of Dr. Rajendra Prasad in Bombay in 1934. The Muslim League condemned the Federal Scheme as "fundamentally bad most reactionary, retrograde, injurious and fatal to the vital interests of British India *vis a vis* the Indian States, and calculated to thwart and delay indefinitely the realisation of India's most cherished goal of complete Responsible Government and is totally unacceptable", although the Provincial Scheme was to be "utilised for what it is worth". The Princes lost their enthusiasm and became reluctant to commit themselves to a system which implied loss of autocratic privileges; Lord Linlithgow's attempts⁷ to convince them of the potentialities of the Federal Scheme did not succeed⁸.

The Provincial Scheme⁹ contained in the Act of 1935 was put in operation in April, 1937. After the elections, which resulted in Congress victory in most of the Provinces, the question of office-acceptance became acute. The Muslim League was then just coming out of the wilderness. It eagerly captured Provincial administration wherever it could, but the Congress remained aloof in distrust.¹⁰ Lord Linlithgow was very anxious to prove the worth of the Constitution of which he himself was one of the framers. He solemnly assured the Congress that the Governors would not interfere in the day-to-day

1 Document Nos. 38, 39, 40.

2 Document Nos. 45, 46.

3 Document No. 43.

4 Document No. 44.

5 Document No. 41.

6 Document Nos. 42, 47.

7 Document No. 67.

8 For the period 1936-1935, the reader may consult Coupland's *The Constitutional Problem in India* (Part II) and *India, A Re-statement*. Coupland is not very fair to the Congress.

9 Document No. 50.

10 Document No. 47.

administration of the Provinces.¹ The Congress accepted office. The question of the release of some political prisoners in the United Provinces and Bihar created a crisis in 1938 which was, however, overcome.² In spite of Lord Linlithgow's belief in the virtues of Provincial Autonomy³ the crisis of the war revealed the width of the gulf which separated the Congress from the British Government.⁴ The Congress Ministers resigned. Provincial Autonomy in most of the Provinces was replaced by the dictatorial rule of the Governors under Section 93 of the Act of 1935.

As long as the Congress Ministers were in office, the Muslim League could not participate in Provincial administration in the so-called 'Congress Provinces'. Mr. Jinnah complained bitterly and loudly that the Muslims suffered many wrongs in those Provinces owing to the communalism of the Congress Ministers.⁵ He adopted an increasingly hostile attitude and ordered the Muslims to celebrate their "day of deliverance" on the resignation of the Congress Ministers. Thus opened that ever-widening breach between the Congress and the League which resulted in the establishment of Pakistan in 1947.

*Provincial Autonomy*⁶

The most important feature of the Act of 1935 was Provincial Autonomy. From this point of view it marked the culmination of the reaction against the Charter Act of 1833, which had made the Provincial Governments completely subordinate to the Central Government in legislation as well as administration. That centralisation led to inconvenience and even conflict; the growing complexities of legislation and administration demanded gradual relaxation of the control of the Government of India. The Act of 1861 introduced partial decentralisation in the sphere of legislation, and Lord Mayo's scheme of financial decentralisation introduced a new tendency in Indian administration. In 1891 Lord Lansdowne declared, "We are all of us fond of dwelling upon the necessity of decentralising our administration".

1 Document No. 48.

2 Document No. 49.

3 Document No. 50.

4 Document Nos. 52, 54.

5 Document Nos. 51, 56.

6 See Bisheshwar Prasad, *The Origins of Provincial Autonomy*.

He found in the States a good instrument of decentralisation.¹ In the days of Lord Curzon the old policy of centralisation was to a large extent restored. In 1907 Lord Morley appointed the Decentralisation Commission, which recommended the relaxation of Central control over the details of Provincial administration. Certain changes in the system of financial administration were introduced in 1912, but there was no basic alteration in the relations between the Central and Local Governments.

A new policy was indicated by the Government of India in a despatch to the Secretary of State, dated August 25, 1911, in which it was observed, "... it is certain that, in the course of time, the just demands of Indians for a larger share in the government of the country will have to be satisfied, and the question will be how this devolution of power can be conceded without impairing the supreme authority of the Governor-General in Council. The only possible solution of the difficulty would appear to be gradually to give the provinces a larger measure of self-government, until at last India would consist of a number of Administrations, autonomous in all Provincial affairs, with the Government of India above them all, and possessing power to interfere in case of misgovernment, but ordinarily restricting their functions to Imperial concern". Although the Secretary of State, Lord Crewe, declared that decentralisation did not imply popular control over Provincial administration, yet the idea of "Administrations autonomous in all Provincial affairs" captured the imagination of Indian political leaders. The Congress-League Scheme² declared: "The Government of India shall not ordinarily interfere in the local affairs of a province, and powers not specifically given to a Provincial Government shall be deemed to be vested in the former". The Montagu-Chelmsford Report recommended that centralisation must diminish in proportion to the introduction of popular control over Provincial administration.³ The Act of 1919 freed the Provincial Governments to a large extent from the control of the Government of India by providing for delegation and devolution of authority, but the constitution remained unitary.⁴

1 See *Indian Constitutional Documents*, Vol. II, p. 348.

2 See *Indian Constitutional Documents*, Vol. II, pp. 294-295.

3 Document Nos. 2, 5.

4 Document No. 9.

The idea of creating a Federation composed of British Indian Provinces and Indian States had originated even before the introduction of the Montagu-Chelmsford Reforms,¹ but it did not take a practical shape before the Round Table Conference.² In a Memorandum circulated by Mahatma Gandhi at the Round Table Conference the Congress standpoint was expressed as follows : "The future constitution of the country shall be federal. The residuary powers shall vest in the federating Units, unless, on further examination, it is found to be against the best interest of India".³ While recommending Provincial Autonomy the Joint Parliamentary Committee emphasized that the unity of India must be maintained.⁴

The type of Provincial Autonomy introduced by the Act of 1935 did not satisfy the Congress,⁵ although Lord Linlithgow repeatedly emphasized its political value.⁶ The Muslim League was definitely hostile to the Federal Scheme, but it decided, in the hope of capturing power in the Muslim-majority Provinces, that "the Provincial Scheme of the constitution be utilised for what it is worth".⁷ The way was thus prepared for the attempt to vivisect India on communal grounds.

The Communal Problem

The communal unity symbolised by the Khilafat Movement reached its climax in 1921, but soon afterwards a gradual worsening of the communal situation began. All hopes of forging new bonds of unity between the Congress and the League were practically given up on the failure of the All Parties' Conference in Calcutta in 1928. The "Delhi Proposals"⁸ of 1927 failed to create a new atmosphere, and the British Government tried its best to prevent the emergence of any united political front of India.⁹ Mr. Jinnah circulated his "Fourteen Points".¹⁰ In the Round Table Conference the

1 Document No. 65, pp. 461-462.

2 Document Nos. 35, 55.

3 Document No. 37, p. 209.

4 Document Nos. 38, 39.

5 Document Nos. 42, 47, 49.

6 Document Nos. 48, 49, 50.

7 Document No. 41, pp. 231-232.

8 Document No. 20.

9 See p. 158, Lord Birkenhead's letter.

10 See Coupland, *The Constitutional Problem in India*, Part II, p. 111.

All these points, except one, were practically conceded by the Reforms of 1935.

Nationalist Muslims had no representative, and when Pandit Madan Mohan Malaviya held a Unity Conference at Allahabad to placate the Muslim League, Sir Samuel Hoare offered better terms (33½ per cent. representation in the Central Legislature and separation of Sind). All chances of unity were thus irretrievably lost, and the solid product of the Round Table Conference was the "Communal Award" devised by the British Government. The Congress adopted an anomalous attitude towards the "Communal Award",² but this halting concession failed to satisfy the Muslims.

Meanwhile Mr. Jinnah was giving up his old nationalist ideas and increasing his influence on his own community.³ He decided to accept the Provincial Scheme of the Act of 1935 although he was strongly opposed to the Federal Scheme.⁴ When the Congress accepted office in certain Provinces in 1937 it refused to form coalition Cabinets, and in the U. P. the Muslim League rejected conditions of co-operation laid down by the Congress.⁵

Mr. Jinnah protested strongly against what he called the policy of "Hindustan for the Hindus".⁶ He "exposed" the "game" of "Congress Fascism" and levelled some specific charges against the Congress Ministries.⁷ These charges were repudiated by the Congress,⁸ and Mr. Jinnah made no attempt to substantiate them, although he demanded a Royal Commission composed of judges.⁹ It is interesting to quote the comments of a pro-Muslim observer, Professor Coupland:

"... the controversy is not of major importance because the incidents in dispute cannot by themselves account for the strength and scope of the Moslem revolt. They were not very numerous considering the vast areas concerned: many of them were of a relatively trivial character: and similar incidents had been occurring from time to time for many years past".¹⁰

1 Document No. 36.

2 Document No. 37.

3 See H. Kabir, *Muslim Politics*, pp. 10-12; B. M. Chaudhuri, *Muslim Politics in India*, pp. 46-47.

4 Document No. 41.

5 See B. M. Chaudhuri, *Muslim Politics in India*, pp. 49-50.

6 Document No. 51, pp. 349-354.

7 Document Nos. 51, 56.

8 See Rajendra Prasad, *India Divided*, pp. 146-152.

9 Document No. 56, p. 401.

10 *The Constitutional Problem in India*, Part II, p. 189.

But Mr. Jinnah emphasized the gravity of the so-called "atrocities" and found in the Congress demand for a Constituent Assembly an attempt to consolidate the dreaded "Hindu Raj".¹ No agreed solution of the constitutional problem was thus possible. The outbreak of the Second Great War widened the gulf between the three parties—the British Government, the Congress and the League.² Mr. Jinnah began to develop the theory of "two nations" which Sir Wazir Hasan had propounded in his Presidential address at the Bombay session of the Muslim League in 1936 :

"It should always be borne in mind that India is a continent. It should further be borne in mind that the Hindus and the Mussulmans inhabiting this vast continent are not two communities but should be considered two nations in many respects".³

The Indian States

Lord Curzon described the Indian Princes as "colleagues and partners"⁴ of the British rulers of India. In other words, to quote Mahatma Gandhi, they had become "British officers in Indian dress".⁵ As a result of his transformation into "an integral factor in the Imperial organisation of India"⁶ the "Native Chief" gradually lost his contact with the people; he was found more "on the polo-ground, or on the race-course, or in the European hotel"⁷ than among his suffering subjects. Some wise British administrators foresaw the inevitable effects of this growing estrangement between the Rulers and the people. One Viceroy after another—from Lord Lansdowne to Lord Linlithgow⁸—warned the Princes that their States should be well-governed. The spirit underlying these warnings was quite in harmony with the system of Patriarchal Government which prevailed in British India till the early years of the present century; but as a result of the gradual introduction of political reforms in British India that oft-repeated insistence on good government be-

1 Document No. 57.

2 Document Nos. 52, 53, 54.

3 Mohammad Noman, *Muslim India*, p. 326.

4 *Indian Constitutional Documents*, Vol. II, p. 349.

5 Document No. 66.

6 *Indian Constitutional Documents*, Vol. II, p. 349.

7 *Indian Constitutional Documents*, Vol. II, p. 349.

8 Document No. 68.

came an anachronism. It was certainly too late in 1939 to say that "the decision as to the constitution best suited to the needs of his people rests with the Ruler himself to take, and . . . no pressure will be brought to bear on him in this respect by the Paramount Power".¹ This policy might have been appropriate if the British Government recognised the validity of the Nizam's claim that Hyderabad² was quite independent "save and except matters relating to foreign powers and policies";³ but the implications of Paramountcy set forth in Lord Reading's famous letter to the Nizam and in the Report of the Butler Committee⁴ reveal the hollowness of British respect for the internal autonomy of the Princes. On the whole, the policy pursued by the Government of India to the question of constitutional reforms in the States justifies the conclusion that the Princes were deliberately left free to continue the medieval system of autocracy⁵ as long as they remained submissive to the Political Department.

The legal and historical aspects of "treaty rights" were discussed by the Nehru Committee⁶ and the Butler Committee.⁷ These discussions were more or less academic. The Nehru Committee rightly pointed out that the question of the States "is more a case for the constructive statesman than for the analytical lawyer". Even the 'analytical lawyer' could hardly afford to forget that treaties concluded more than a century ago under circumstances having not the remotest resemblance to the political condition of India in the thirties of the present century, and differently interpreted by the Paramount Power at different times, could no longer be invoked in defence of a system which public opinion was not prepared to tolerate. The Indian States may not be governed by International Law, but the principle of *rebus sic stantibus* is based on sound practical considerations which statesmen cannot afford to ignore.

The Nehru Committee discussed the question whether the Paramountcy of the Crown could be transferred to the Government of India if India attained Dominion Status. The Act of

1 Document No. 68, p. 471. Compare the views of the Maharaja of Bikaner—pp. 458-459.

2 Document No. 62 shows that other States also claimed similar rights.

3 Document No. 59.

4 Document No. 64.

5 Document No. 69.

6 Document No. 61.

7 Document Nos. 63, 64.

1935 repudiated the claim of the Nehru Committee and provided that the Crown Representative, not the Governor-General or the Government of India, would deal with the claims of Paramountcy. The Congress adopted a cautious policy towards the States,¹ but the growing political discontent in British India did not leave the States unaffected. Lord Linlithgow failed to persuade the States to join the proposed Federation.² It was left for Sardar Vallabhbhai Patel to remove the barriers between "British India" and "Princely India" and to relegate to the care of the historian the multi-coloured relics of our romantic past.

Retrospect

In a sense the constitutional history of India begins in 1917. The three Indian Councils Acts (1861, 1892, 1909)³ did not transfer power to India, nor did they encourage feeling of responsibility in the elected Indian members of the legislatures. The authors of the Montagu-Chelmsford Report observed that the Morley-Minto Scheme failed because it "ceased in the brief space of ten years' time to satisfy the political hunger of India".⁴ Had they been able really to feel the pulse of this country, they would have understood that the Reforms of 1909 had not 'satisfied the political hunger of India' even when they were promulgated. Looking back on the events of the period before 1947 we may observe that the Governments of Britain—whether Liberal, or Conservative, or Labour—never made any earnest attempt "to satisfy the political hunger of India" till circumstances made it absolutely necessary for Britain to withdraw from India. What the "agitators" said in those days of frustration will now, it seems, be acclaimed as the verdict of sober history. Had Britain realised the intensity of India's "political hunger" the Mont-Ford Scheme might have been more generous. Whatever concessions it made were due, not to generosity or political sympathy, but to pressing political and military necessity. Referring to Mr. Montagu's Announcement of August 20, 1917, an American writer says: "It was the product of motives that were more or less contradictory. India was to be rewarded for her loyalty and at the same time bribed

1 Document No. 67.

2 Document No. 68.

3 *Indian Constitutional Documents*, Vol. II, pp. 31-52, 106-110, 233-238.

4 *Report*, Para 100.

to keep quiet while the Empire was fighting for its life".¹ These 'contradictory motives' undoubtedly explain some of the contradictions and incongruities in the Act of 1919. But that Act undoubtedly made a new departure in British Indian history: for the first time in the history of British rule it provided for transfer of power, even though the transfer was halting and the power extremely limited.

It is interesting, if unprofitable, to speculate whether the Act of 1919 contained within itself germs of steady constitutional progress. One writer says: "The chief obstacle was political rather than constitutional. There was only one large and well-organized party or political bloc in India and it was irreconcilable".² This attempt to distinguish between political and constitutional obstacles to the working of the Act of 1919 is really begging the question. No constitution can be worked successfully in any country if it fails to satisfy the "political hunger" of the people. If organised political opinion is irreconcilably opposed to a particular constitution it is useless to discuss its theoretical merits or demerits. The British Government knew that the only "well-organized party" in India was "irreconcilable". Had it been really anxious to secure genuine constitutional progress it would have tried to satisfy this party instead of weakening it by encouraging Moderates and Muslims. Even from the strictly constitutional point of view the British Government and its agents in India jeopardised the success of the "experiment"³ by ill-advised opposition to popular wishes and opinions. Lord Reading used the power of certification to protect the Indian Princes from criticism and to increase the salt tax. In his famous "Steel Frame" speech in the House of Commons on August 2, 1922, Mr. Lloyd George declared that he could see no time when India could dispense with the guidance and assistance of the Indian Civil Service. Popular suspicions were strengthened by the appointment of the Lee Commission and confirmed by its recommendations. An American writer admits that "the British civilians as a class had . . . been obviously hostile to the Reforms".⁴ If the Nationalists were guilty of destruc-

1 W. R. Smith, *Nationalism and Reform in India*, p. 82.

2 W. R. Smith, *Nationalism and Reform in India*, p. 112.

3 Mr. Lloyd George used this word with reference to the Reforms of 1919.

4 W. R. Smith, *Nationalism and Reform in India*, p. 121.

tive criticism and wrecking tactics, the rulers were no less guilty of destructive speeches and provocative actions.

So the Act of 1919 failed, and the British Government recognised its failure by appointing the Simon Commission. Once again it failed to take into account the views—call them prejudices if you will—of “the only one large and well-organized party” in India. It did not strike the British rulers that a political enquiry boycotted by the leading exponents of popular wishes could not succeed. True to traditional British policy, Lord Birkenhead tried “to terrify the immense Hindu population by the apprehension that the Commission is being got hold of by the Moslems and may present a report altogether destructive of the Hindu position”.¹ An American writer says, “If Lord Birkenhead and his associates did not deliberately intend to insult and humiliate the people of India they were woefully ignorant of racial psychology”.²

As the Simon Commission proceeded with its work in spite of Congress boycott it was, to quote its own words, “increasingly impressed by the impossibility of considering the constitutional problems of India without taking into account the relations between British India and the Indian States”. So it recommended that the British Government should summon both representatives of British India and representatives of the States to a conference “for the purpose of seeking the greatest possible measure of agreement for the final proposals which it would later be the duty of His Majesty’s Government to submit to Parliament”. This was the origin of the Round Table Conference. The idea of including “British India” and “Indian India” in one comprehensive constitutional scheme was a novelty in those days, and from the political and constitutional points of view it was certainly a welcome novelty.

But was it an attempt to rally the Princes against the rising tide of Nationalism?³ There are many shrewd observers of political events in India who suspect that in summoning the Princes to the Round Table Conference the British Government was not guided by a genuine desire to bring uniformity to India’s political scene; it was rather anxious to utilise the Princes for

¹ See p. 158.

² W. R. Smith, *Nationalism and Reform in India*, p. 375.

³ See *Indian Constitutional Documents*, Vol. II, Introduction, pp. xxxviii-xxxix.

the purpose of nullifying in practice such transfer of power as it might be forced to make in theory. It must not be forgotten that, in Mahatma Gandhi's words, the Princes were "British officers in Indian dress".¹ These "officers" could hardly be taken as friendly and reliable partners by the Nationalists who wanted real transfer of power. But the Government of India Act made the establishment of federation dependent upon the co-operation of the Princes.² It was to be, said that the President of the Congress, "a kind of federation in which unabashed autocracy will sit entrenched in one-third of India and peep in every now and then to strangle popular will in the remaining two-thirds".³

It is somewhat strange that the Princes finally refused to be roped in by the Paramount Power. They decided not to join the Federation, and their non-co-operation, apart from the policy of the Congress and the Muslim League, torpedoed the carefully framed Federal Scheme. According to Professor Coupland,⁴ the Bombay Resolution (1935) of the Princes shows that they "were not really willing to permit the Federal authorities to exercise those minimum powers within their States which were essential in any federal system". Moreover, "the marked change in the attitude of the Congress towards them" after 1937 proved, we are told, to be a cause of alarm. The coming of the Congress to power in several Provinces replaced the old policy of toleration of Princely rule by "a policy of undisguised hostility to the States' governments and of open encouragement of agitation within and without the States against them".⁵ This statement is hardly supported by the Haripura and Tripuri resolutions of 1938-1939.⁶ The Congress as an organisation kept aloof from popular movements in the States, but it could not restrain individual Congressmen and States Congress Committees. There was no real change in Congress policy, but there was a real change in the country which alarmed the Princes. If "British India" succeeded in getting "democratic freedom", "Princely India" could not perpetuate "unabashed autocracy". So the Princes stepped aside, hoping that the postponement of the

1 Document No. 66.

2 Section 5—See Document No. 45.

3 Document No. 42. p. 238.

4 *The Constitutional Problem in India*, Part II. Chapter I.

5 See Coupland, *The Constitutional Problem in India*, Part II. Chapter xvi.

6 Document No. 67.

Federal Scheme would mean the postponement of "democratic freedom" for British India.

There was probably another important reason which prevented the Princes from accepting the Federal Scheme. Dr. Rajendra Prasad's Presidential address at the Bombay session of the Congress (1934) contained an important statement : ". . . . the Princes themselves will be more helpless than they are now and will soon realise the effect of a federation which is conceived to keep them free from the baneful interference of British India people but nonetheless subservient to the Viceroy".¹ Acceptance of the Federal Scheme would mean for the Princes submission to dual authority. The Federal Government of India, in which the Congress was sure to exercise predominant, if not always effective, influence, would control the administration of the States in some essential matters, and it was well-known that under modern conditions the Centre was likely to grow at the cost of the units. But acceptance of Federal control would not free the Princes from the undefined control of the Paramount Power. The Report of the Butler Committee had not accepted the Princes' views on Paramountcy.² When the Act of 1935 was on the anvil the Princes wanted an authoritative definition of Paramountcy; but the reply was vague and disappointing. "The nature of their relationship to the King-Emperor," observed the Secretary of State, "is a matter which admits of no dispute." In other words, Paramountcy would remain paramount even if some part of "internal sovereignty" was surrendered to the Congress-dominated Federation. Why should the Princes welcome two masters in place of one?

If the Princes were afraid of the Congress, the Congress was also afraid of them. One of the principal objections of the Congress to the Federal Scheme related to the position of the Princes in the Federation.³ Of course there were other objections, *e.g.*, no real transfer of power in the Centre, defects of the Provincial Scheme, special powers of Governor-General and Governor, protection of European interests, etc.⁴ The Congress pursued a consistent policy of opposition to the Act of 1935, particularly to the Federal Scheme, and laid down the democratic principle of framing a new constitution through a really repre-

1 Document No. 42, p. 238.

2 Document Nos. 62, 64.

3 See pp. 226-227, 238, 327.

4 Document Nos. 41, 42, 47.

sentative Constituent Assembly.¹ The British Government did not take this proposal seriously, and it found an able ally in Mr. Jinnah.

Regrets have been expressed that the Congress, excited by its electoral victory in 1937, refused to co-operate with the Muslim League on terms honourable to both sides and thereby drove Mr. Jinnah to uncompromising opposition. It is difficult to say whether two parties differing so much in composition, outlook and methods could have worked together for any length of time without exposing their basic conflicts. No one who reads carefully the speeches of Mr. Desai and Mr. Jinnah² on the Report of the Joint Parliamentary Committee can insist that real co-operation was possible. Moreover, when the Congress Ministries were formed Mr. Jinnah was not the dictator of "Muslim India". As a matter of fact he was not in a position in 1937 to deliver the goods in any of the four Muslim-majority Provinces.³ Compromise with him would not have meant complete Hindu-Muslim unity in 1937.

Men in office always expose themselves to attacks from different quarters, for no political party can solve all problems or satisfy all interests. No wonder the Congress was assailed by Mr. Jinnah. He forgot that the Hindus of the Muslim-majority Provinces ruled by non-Congress Governments had many complaints against the Muslim Ministries. He gave a communal colour to all complaints against the Congress Ministries and built up his ascendancy on a negative programme. He repudiated Congress rule but provided no alternative. He ridiculed the idea of a Constituent Assembly⁴ but made no constructive suggestion for the preparation of a constitution acceptable to all parties. His constructive suggestion came in a nebulous form in 1940 in the shape of the famous Pakistan resolution.⁵ It was a plan destructive in its essence, for it was a complete repudiation of the unity which two centuries of British rule had created in this country.

1 Document Nos. 47 (p. 326), 55.

2 Document No. 41.

3 In Bengal Mr. Fazlul Huq and in the Punjab, Sir Sikandar Hyat Khan, both of them opposed to Mr. Jinnah, controlled the Government. In Sind the Nationalist Muslims held the balance of power. In the North-Western Frontier Province the Congress commanded a working majority.

4 Document No. 57.

5 *The Making of the Indian Constitution*, pp. 22-23.

Could this squandering away of unity, politically the most precious legacy of British rule, have been prevented by Congress co-operation with the British Government in the prosecution of war? It is a tragedy that the Congress, with all its active hostility towards Fascism, failed to secure from Britain such political assurances as would have allowed the Congress Ministers to remain in office during the critical years following the declaration of war.¹ Even in those fateful days the British Government brought in the Muslim League and the Princes to counteract the claims of the Congress.² Instead of co-operation the Congress got a challenge and accepted it. For several years both the British Government and the Congress exhausted themselves in fruitless hostility. When exhausted Britain felt it necessary to come to terms with the Congress reinvigorated by popular support, both found in the Muslim League a power that had to be reckoned with.³

1 Document No. 52.

2 Document No. 54.

3 See A. C. Banerjee, *The Making of the Indian Constitution*.

INDIAN CONSTITUTIONAL DOCUMENTS

1. MR. MONTAGU'S DECLARATION, 1917. (House of Commons, August 20, 1917)

[Mr. Montagu had been Parliamentary Under-Secretary for India under Lord Morley and Lord Crewe. His views on the relation between the 'Home' Government and the Government of India alarmed Lord Minto. Mr. Montagu said in his Budget speech of August, 1910, "The relations of the Viceroy to the Secretary of State are intimate and responsible. The Act of Parliament says 'that the Secretary of State in Council shall superintend, direct and control all acts, operations, and concerns which in any way relate to or concern the government and revenues of India, and all grants of salaries, gratuities or allowances, and all other payments and charges whatever out of or on the revenues of India'. It will be seen how wide, how far-reaching, and how complete these powers are. Lord Morley and his Council, working through the agency of Lord Minto, have accomplished much".¹ Regarding this speech Lord Minto wrote to Lord Morley on August 18, 1910, "...his reference to the position of the Government of India has taken every one aback. I had not realized that the Viceroy was merely an *agent* and the Government of India apparently only a registry office! Chapter V on 'The Home Government'². . . . in Sir J. Strachey's book *India, Its Administration and Progress*, explains the view I have always understood to be accepted as to the relations of the Secretary of State and Government of India. . . ."³

In 1912 Mr. Montagu came to India to acquaint himself personally with the country, her people and her problems. Mr. C. Y. Chintamani says, "Mr. Montagu was not an ordinary friend of India. He had a passion for India. As a result of all that I saw and knew and learnt I do not hesitate to give the first place to Mr. Montagu among all the Secretaries of State for India. . . . no one before or after Mr. Montagu came anywhere near him in love of India and service of the Indian people."⁴

Soon after his arrival in India Lord Chelmsford came to the conclusion "that the endowment of British India as an

1 John Buchan, *Lord Minto*, pp. 309—310.

2 See *Indian Constitutional Documents*, Vol. II, Document No. 28.

3 Lady Minto, *India, Minto and Morley*, p. 408.

4 *Indian Politics Since the Mutiny*, pp. 79, 80.

integral part of the British Empire with self-government was the goal of British rule". He forwarded to the Secretary of State, Sir Austen Chamberlain, proposals "to confer greater powers and a more representative character upon existing local self-governing units such as district (rural) boards and municipal councils; to increase the proportion of Indians in the higher administrative posts, and to pave the way for an enlargement of the constitutional powers of the provincial legislatures by broadening the electorate and increasing the number of elected members". Sir Austen Chamberlain did not favour these proposals. He was not prepared to avow more than "an intention to foster the gradual development of free institutions with a view to self-government". On succeeding him Mr. Montagu prepared a draft formula which was put in its final form by Lord Curzon.¹]

Political
goal of
India

The policy of His Majesty's Government, with which the Government of India are in complete accord, is that of the increasing association of Indians in every branch of the administration and the gradual development of self-governing institutions with a view to the progressive realization of responsible government in India as an integral part of the British Empire. They have decided that substantial steps in this direction should be taken as soon as possible, and that it is of the highest importance as a preliminary to considering what these steps should be that there should be a free and informal exchange of opinion between those in authority at Home and in India. His Majesty's Government have accordingly decided, with His Majesty's approval, that I should accept the Viceroy's invitation to proceed to India to discuss these matters with the Viceroy and the Government of India, to consider with the Viceroy the views of Local Governments, and to receive with him the suggestions of representative bodies and others.

Exchange of
opinion
between
British and
Indian Gov-
ernments

Progress by
successive
stages

I would add that progress in this policy can only be achieved by successive stages. The British Government and the Government of India, on whom the responsibility lies for the welfare and advancement of the Indian peoples, must be judges of the

¹ See Ronaldshay, *Life of Lord Curzon*, Vol. III, pp. 165-167.

time and measure of each advance, and they must be guided by the co-operation received from those upon whom new opportunities of service will thus be conferred and by the extent to which it is found that confidence can be reposed in their sense of responsibility.

Co-operation and sense of responsibility shown by Indians will determine stages of progress.

Ample opportunity will be afforded for public discussion of the proposals which will be submitted in due course to Parliament.

2. MONT-FORD REPORT ON GOAL OF POLITICAL EVOLUTION IN INDIA.

[Mr. Montagu came to India in November, 1917. His published *Diary* gives some account of his activities in this country. The *Report* was drafted by Mr. (later Sir) William Marris¹ of the Indian Civil Service, and published in July, 1918. The Government of India Bill based on it was introduced in the House of Commons on June 2, 1919. The Joint Parliamentary Committee, presided over by Lord Selborne, altered some provisions of the Bill and submitted its report in November, 1919. The Bill became an Act on December 23, 1919, and came into full operation in 1921.]

349. Our conception of the eventual future of India is a sisterhood of States, self-governing in all matters of purely local or provincial interest, in some cases corresponding to existing Provinces, in others perhaps modified in area according to the character and economic interests of their people. Over this congeries of States would preside a central Government, increasingly representative of and responsible to the people of all of them; dealing with matters, both internal and external, of common interest to the whole of India; acting as arbiter in inter-state relations, and representing the interests of all India on equal terms with the self-governing units of the British Empire. In this picture there is a place also for the Native States. It is possible that they too will wish to be associated for certain purposes with the organization of British India in such a way as to dedicate their peculiar qualities to the common service without loss of individuality.

Self-governing Provinces

Representative and Responsible Central Government

Indian States

¹ Later Governor of the United Provinces.

**Responsible
Government
in Provinces
is an
essential
step towards
Responsible
Government
at the
Centre.**

**Nature of
change
in the
Central
Government**

350. But it seems to us axiomatic that there cannot be a completely representative and responsible Government of India on an equal footing with the other self-governing units of the British Commonwealth until the component States whose people it represents and to whom it is responsible, or at least the great majority of them, have themselves reached the stage of full responsible government. Nor even then can we say that the form or the degree of responsibility which will be reached in India will exactly correspond to that attained by the Dominions. The final form of India's constitution must be evolved out of the conditions of India, and must be materially affected by the need for securing Imperial responsibilities. The dominating factor in the intermediate process must be the rate at which the Provinces can move towards responsible government. At the same time change obviously cannot be confined to the Provinces. In proportion as they become more responsible the control which the Government of India exercises over them must diminish. But it is not merely a question of the extent of the control; the nature and manner of its exercise must in course of time be modified. We cannot think that States on the way to responsible government, which have imbibed a large element of responsibility into their constitutions, can be controlled by a purely autocratic power. So also with the duties extending over the whole of India which will be discharged by the Government of India as its special concern. It is impossible that while other duties which differ from them mainly in being local in scope or subject to provincial differentiation are being administered by responsible Governments, those which fall to the Government of India should be administered autocratically. It follows, therefore, that change in the Provinces implies change in the Government of India, but it does not imply that the change should be simultaneous or in equal proportion. On the contrary the change need simply be so much as to render the Government of India a suitable instrument for con-

trolling the Provinces at the stage at which they have for the time being arrived.

351. Similarly all movement towards responsible government in India implies a corresponding change in the constitution of the controlling agency in England. We cannot predict what kind of agency India will wish to maintain in London once she has attained the status of full partnership in the Empire; but it must be very different from the existing arrangements in relation to India Parliament will, we imagine, observe the principles long adopted towards the British self-governing colonies, and will contract its interference and control in direct proportion to the expansion of self-government. As this grows, the volume of business in which Parliament will interfere will steadily shrink, and the occasions will be rarer on which the Secretary of State will have to exercise control and will need to be advised regarding its exercise. This points to a diminution in the establishment of the India Office and possibly to a modification in the Council of India. But here, again, it is a question not merely of the volume of work but also of the spirit in which it is conducted. In dealing with organizations which have become largely representative and in some degree responsible, the need for mutual understanding and action strengthened by consent will be continually enhanced.

Responsible Government in India would require change in 'the controlling agency in England'.

352. Again, while the growth of responsibility in India will lead to decreased intervention by the Secretary of State and Parliament in day-to-day administration, the fact that India's further political progress is to be determined by Parliament makes it imperative that Parliament should be better informed about and more keenly interested in Indian conditions. The decisions to be taken in the future must to some extent be controversial; different advice about them will be offered from different sources; and Parliament which is the final arbiter of India's destiny should be in a position to form a wise and independent judgment. For these reasons we have suggested means

Parliament—'final arbiter of India's destiny'

of improving its opportunities of exercising a well-informed control.

**Extension
of local
self-
government**

**Self-
government
in Provinces**

**'Better re-
presentation
and more
criticism
in the
Government
of India'**

353. We conclude therefore that change in any one portion of the Indian polity will involve changes on parallel lines but by no means at an equal pace in the other portions; and we claim that our proposals satisfy this fundamental principle. We begin with a great extension of local self-government so as to train the electorates in the matters which they will best understand. Simultaneously we provide for a substantial measure of self-government in the Provinces and for better representation and more criticism in the Government of India and for fuller knowledge in Parliament. And we suggest machinery by means of which at regular stages the element of responsibility can be continuously enlarged and that of official control continuously diminished, in a way that will guarantee ordered progress and afford an answer to intermediate representations and agitation.

3. MONT-FORD REPORT ON DYARCHY.

Governor

**Executive
Council**

218. We propose that in each Province the Executive Government should consist of two parts. One part would comprise the head of the Province and an Executive Council of two members. In all provinces the head of the Government would be known as Governor, though this common designation would not imply any equality of emoluments or status, both of which would continue to be regulated by the existing distinctions, which seem to us generally suitable. One of the two Executive Councillors would in practice be a European, qualified by long official experience, and the other would be an Indian. It has been urged that the latter should be an elected member of the Provincial Legislative Council. It is unreasonable that choice should be so limited. It should be open to the Governor to recommend whom he wishes. In making his nominations the Governor should be free to take into consideration the names of persons who had won distinction, whether in the Legislative Council or any other field. The Governor

in Council would have charge of the reserved subjects. **Reserved Subjects**
 The other part of the Government would consist of one member, or more than one member, according to the number and importance of the transferred subjects, chosen by the Governor from the elected members of the Legislative Council. They would be known as ministers. They would be members of the executive Government, but not members of the Executive Council; and they would be appointed for the lifetime of the Legislative Council and if re-elected to that body would be re-eligible for appointment as members of the executive. As we have said, they would not hold office at the will of the Legislature, but at that of their constituents. **Transferred Subjects**
 We make no recommendation in regard to pay. This is a matter which may be disposed of subsequently. **Ministers**

219. The portfolios dealing with the transferred subjects would be committed to the ministers, and on these subjects the ministers together with the Governor would form the administration. **Governor's position in regard to Transferred Subjects**
 On such subjects their decisions would be final, subject only to the Governor's advice and control. We do not contemplate that from the outset the Governor should occupy the position of a purely constitutional Governor who is bound to accept the decisions of his ministers. Our hope and intention is that the ministers will gladly avail themselves of the Governor's trained advice upon administrative questions, while on his part he will be willing to meet their wishes to the furthest possible extent in cases where he realizes that they have the support of popular opinion. We reserve to him a power of control, because we regard him as generally responsible for his administration, but we should expect him to refuse assent to the proposals of his ministers only when the consequences of acquiescence would clearly be serious. Also we do not think that he should accept without hesitation and discussion proposals which are clearly seen to be the result of inexperience. But we do not intend that he should be in a position to refuse assent at discretion to all his ministers' proposals. We

**Instrument
of Instruc-
tions for
Governor**

recommend that for the guidance of Governors in relation to their ministers and indeed on other matters also, an Instrument of Instructions be issued to them on appointment by the Secretary of State in Council.

**Members
without
portfolio**

220. There is another provision which we wish to make. The Governor may be himself unfamiliar with Indian conditions; and his Government, constituted as we have proposed, will contain only one European member. He will thus normally have only one member with official experience. In some provinces, where the Governor is himself an official and thoroughly familiar with the requirements of the Province, the advice and assistance of one official colleague may suffice. But in other cases this will not be so. We propose, therefore, that the Governor should appoint, if he chooses, one or two additional members of his Government, as members without portfolio, for purposes of consultation and advice. It is true that it is always open to the Governor to seek the advice of any of his officials; but that is not the same thing as appointing them to be members of the Government with the status and authority attaching to such office. The additional members would still discharge the functions of, and draw the pay attached to their substantive appointments.

**'One
Govern-
ment'**

**Joint deli-
berations
of two parts
of the Gov-
ernment**

221. It is our intention that the Government thus composed and with this distribution of functions shall discharge them as one Government. It is highly desirable that the executive should cultivate the habit of associated deliberation and essential that it should present a united front to the outside. We would therefore suggest that as a general rule, it should deliberate as a whole, but there must certainly be occasions upon which the Governor will prefer to discuss a particular question with that part of his Government, directly responsible. It would therefore rest with him to decide whether to call a meeting of his Government, or of either part of it, though he would doubtless pay special attention to the advice of the particular member or minister in charge of the

subject under discussion. The actual decision on a transferred subject would be taken, after general discussion, by the Governor and the other members of his Executive Council, who would arrive at their decision in the manner provided in the existing statute. The additional members, if present, would take their share in the discussion, but would in no case take a part in the decision. At a meeting of the whole Government there would never be, in fact, any question of voting, for the decision would be left, as we have stated, to that part of the Government responsible for the particular subject involved. But there are questions upon which the functions of the two portions of the Government will touch or overlap, such, for instance, as decisions on the budget or on many matters of administration. On these questions, in case of a difference of opinion between the ministers and the Executive Council, it will be the Governor who decides.

How to arrive at decisions?

No voting

Ultimate authority of the Governor

222. Let us now see the advantages of this transitional arrangement and anticipate criticisms. It has been urged with great force that, at the outset, it would be unfair to entrust the responsibility for the administration of any subject to men holding office at the will of the Legislative Council. The Legislative Council has had no experience of the power of dismissing ministers, or the results attending the exercise of such power. Nobody in India is yet familiar with the obligations imposed by tenure of office at the will of a representative assembly. It is only by actual experience that these lessons can be learned. But our scheme provides security of tenure for ministers for the life-time of the Council during the preliminary period, and therefore gives some time, which we think should be short, to prepare for the full exercise of responsibility. By the device, however, of appointing the ministers from the elected members of the Legislative Council and making their tenure of office conditional on the retention of their seats we have established at once some measure of responsibility, in the form of responsibility to their constituents, and have

Should administration be entrusted to Ministers responsible to the Legislature?

Safeguards incorporated in provisional scheme

Responsibility of Ministers to the Electorate

**Division of
responsi-
bility
between
two parts
of the
Government**

**Increase in
the Indian
element in
Provincial
Government**

**Peculiar
character
of the
proposed
Provincial
Executive**

thus put an end to the condition of affairs in which those entrusted with the administration are wholly irresponsible to the constituents who elect the Legislative Council. By dividing the Government into what will in effect be two committees with different responsibilities we have ensured that members of the Government accountable to different authorities do not exercise the same responsibility for all subjects. By entrusting the transferred portfolios to the ministers, we have limited responsibility to the Indian electorate to those subjects in which we desire to give responsibility first. We have done this without now, or at any time, depriving the Indian element in the Government of responsibility for the reserved subjects. The fact that we are entrusting some functions of Government to ministers makes it impossible for us to contemplate the retention in any Province of an Executive Council of more than two members; but the reduction of the European element in the Council may be regarded as equivalent to an increase in the Indian element. At the same time, by the appointment of the additional members of the Government we have secured that the Governor shall have at his disposal ample official advice. The arrangement admits of adjustment to the different Provinces, because we contemplate that the number of transferred subjects, and therefore the number of ministers, may vary in each province. It is quite true that our plan involves some weakening of the unity of the executive and some departure from constitutional orthodoxy, but whenever and wherever we approach this problem of realizing responsibility at different times in different functions we find it impossible to adhere tightly to theoretical principles. It would be impossible to attain our object by a composite Government so composed that all its members should be equally responsible for all subjects. At the same time, it is necessary to secure that the whole executive should be capable of acting together. What we can do is to aim at minimizing causes of friction; and we have proposed arrangements that can be worked by mutual forbearance and a strong common

purpose. It is our intention that the decisions of the Government should be loyally defended by the entire Government, but that the ministers should feel responsibility for conforming to the wishes of their constituents. It is true that these two forces may pull different ways; but, though the analogy is clearly not complete, there are occasions when members of a Government, and indeed members of Parliament at Home, have to choose between loyalty to the Government and to their own constituents. All the members of the composite executives will be chosen by the Governor and his position in the administration will enable him to act as a strong unifying force. The habit of deliberating as a whole will also tend to preserve the unity of the Government, while the special responsibility of either part for the subjects committed to it will be recognised by the Legislative Council and the electorate. It seems to us, therefore, that, both from the point of view of capacity for development and from that of ensuring co-operation while developing responsibility, our arrangement is the best that can be devised for the transitional period.

Governor—
'a strong
unifying
force'

A tentative
arrange-
ment for
transitional
period

223. Our proposals may strike some critics as complicated. But few constitutions, except those of a purely despotic character, can be described without some appearance of complication; and the course which we have deliberately chosen, and which is in its nature experimental and transitional, is relatively elaborate because it involves the temporary co-ordination of two different principles of government. If we had proposed to delay the concession of any responsibility at all until such time as we could give complete responsibility our scheme certainly would have had the minor merit of simplicity. But apart from our obligation to comply with the announcement of August 20, we feel that such a course would have subjected the mechanism of government, when the change from irresponsibility to complete responsibility came, to so violent a shock that it might well have broken down. We were driven therefore first to devising some dualism in the executive; and secondly

Grant of
responsi-
bility
cannot be
delayed.

Responsi-
bility com-
bined with
irresponsi-
bility

to providing for such a balance of power between the two portions as would permit the one portion to grow without at the same time disabling the other from discharging its very necessary functions of preserving continuity and safeguarding essentials. Given such difficult conditions we do not think that a less elaborate solution can readily be devised.

4. MONT-FORD REPORT ON COMMUNAL ELECTORATES.

Muslims
opposed to
abolition of
communal
electorates

Policy of
Lord
Lansdowne

Policy of
Lord
Minto

227. . . . we are brought face to face with the most difficult question which arises in connexion with elected assemblies—whether communal electorates are to be maintained. We may be told that this is a closed question, because the Muhammadans will never agree to any revision of the arrangement promised them by Lord Minto in 1906 and secured to them by the reforms of 1909. But we have felt bound to re-examine the question fully in the light of our new policy, and also because we have been pressed to extend the system of communal electorates in a variety of directions. This is no new problem There has hitherto been a weighty consensus of opinion that in a country like India no principle of representation other than by interests is practically possible. Lord Dufferin held this view in 1888, and in 1892 Lord Lansdowne's Government wrote that:—"The representation of such a community upon such a scale as the Act permits can only be secured by providing that each important class shall have the opportunity of making its views known in Council by the mouth of some member specially acquainted with them." We note that in 1892 the small size of the Councils was reckoned as a factor in the decision and that the contrary view was not without its exponents; but we feel no doubt that Lord Minto's Government followed the predominant opinion when in 1908 they pressed for an important extension of the communal principle. Thus we have had to reckon not only with the settled existence of the system, but with a large volume of weighty opinion that no other method is feasible.

228. The crucial test to which, as we conceive, all proposals should be brought is whether they will or will not help to carry India towards responsible government. Some persons hold that for a people, such as they deem those of India to be, so divided by race, religion and caste as to be unable to consider the interests of any but their own section, a system of communal and class representation is not merely inevitable, but is actually best. They maintain that it evokes and applies the principle of democracy over the widest range over which it is actually alive at all by appealing to the instincts which are strongest; and that we must hope to develop the finer, which are also at present the weaker, instincts by using the forces that really count. According to this theory communal representation is an inevitable, and even a healthy, stage in the development of a non-political people. We find indeed that those who take this view are prepared to apply their principles on a scale previously unknown, and to devise elaborate systems of class or religious electorates into which all possible interests will be deftly fitted. But when we consider what responsible government implies, and how it was developed in the world, we cannot take this view. We find it in its earliest beginnings resting on an effective sense of the common interests, a bond compounded of community of race, religion and language. In the earlier form which it assumed in Europe it appeared only when the territorial principle had vanquished the tribal principle, and blood and religion had ceased to assert a rival claim with the State to a citizen's allegiance; and throughout its development in Western countries, even in cases where special reasons to the contrary were present, it has rested consistently on the same root principle. The solitary examples that we can discover of the opposing principle are those of Austria, a few of the smaller German states, and Cyprus. It is hardly necessary to explain why we dismiss these as irrelevant or unconvincing. We conclude unhesitatingly that the history of self-government among the nations who

**Arguments
in favour of
communal
electorates**

**Communal
electorates
are opposed
to the
teaching
of History.**

developed it, and spread it through the world, is decisively against the admission by the State of any divided allegiance; against the State's arranging its members in any way which encourages them to think of themselves primarily as citizens of any smaller unit than itself.

Communal
electorates
perpetuate
class
divisions.

229. Indian lovers of their country would be the first to admit that India generally has not yet acquired the citizen spirit, and if we are really to lead her to self-government we must do all that we possibly can to call it forth in her people. Division by creeds and classes means the creation of political camps organized against each other, and teaches men to think as partisans and not as citizens; and it is difficult to see how the change from this system to national representation is ever to occur. The British Government is often accused of dividing men in order to govern them. But if it unnecessarily divides them at the very moment when it professes to start them on the road to governing themselves it will find it difficult to meet the charge of being hypocritical or short-sighted.

Communal
electorates
stereotype
existing
relations
between
communi-
ties.

230. There is another important point. A minority which is given special representation owing to its weak and backward state is positively encouraged to settle down into a feeling of satisfied security; it is under no inducement to educate and qualify itself to make good the ground which it has lost compared with the stronger majority. On the other hand, the latter will be tempted to feel that they have done all they need do for their weaker fellow countrymen, and that they are free to use their power for their own purposes. The give-and-take which is the essence of political life is lacking. There is no inducement to the one side to forbear, or to the other to exert itself. The communal system stereotypes existing relations.

231. We regard any system of communal electorates, therefore, as a very serious hindrance to the development of the self-governing principle. The evils of any extension of the system are plain.

Already communal representation has been actually proposed for the benefit of a majority community in Madras. At the same time we must face the hard facts. The Muhammadans were given special representation with separate electorates in 1909. The Hindus' acquiescence is embodied in the present agreement between the political leaders of the two communities¹. The Muhammadans regard these as settled facts, and any attempt to go back on them would rouse a storm of bitter protest and put a severe strain on the loyalty of a community which has behaved with conspicuous loyalty during a period of very great difficulty, and which we know to be feeling no small anxiety for its own welfare under a system of popular government. The Muhammadans regard separate representation and communal electorates as their only adequate safeguards. But apart from a pledge which we must honour until we are released from it, we are bound to see that the community secures proper representation in the new Councils. How can we say to them that we regard the decision of 1909 as mistaken, that its retention is incompatible with progress towards responsible government, that its reversal will eventually be to their benefit; and that for these reasons we have decided to go back on it? Much as we regret the necessity, we are convinced that so far as Muhammadans at all events are concerned the present system must be maintained until conditions alter, even at the price of slower progress towards the realization of a common citizenship. But we can see no reason to set up communal representation for Muhammadans in any province where they form a majority of the voters.

282. We have been pressed to extend the concession to other communities. Some have based their claim on their backward, others on their advanced, condition. Thus, the Sikhs in the Punjab, the non-Brahmans in Madras (although in that

¹ The reference is to the Lucknow Pact. See *Indian Constitutional Documents*, Vol. II, Document No. 51.

presidency these actually constitute a majority), the Indian Christians, the Anglo-Indians, the Europeans, and the Lingayat community in Bombay have all asked for communal representation. The large land-owning classes also generally desire representation in an electorate of their own. Now, our decision to maintain separate electorates for Muhammadans makes it difficult for us to resist these other claims; but, as we have said, in the case of the Muhammadans we have felt ourselves bound by promises given and renewed by Secretaries of State and Viceroy and in their respect at all events our recommendation involves no new departure. Any general extension of the communal system, however, would only encourage still further demands, and would in our deliberate opinion be fatal to that development of representation upon the national basis on which alone a system of responsible government can possibly be rooted. At the same time, we feel that there is one community from whom it is inexpedient to withhold the concession. The Sikhs in the Punjab are a distinct and important people; they supply a gallant and valuable element to the Indian Army; but they are everywhere in a minority, and experience has shown that they go virtually unrepresented. To the Sikhs, therefore, and to them alone, we propose to extend the system already adopted in the case of Muhammadans.

Case of
the Sikhs

Nomination
for repre-
sentation of
minorities

For the representation of other minorities we should prefer nomination. Even in the case of the general European community, whose material interests in the country are out of all proportion to their numerical strength and on whose behalf it may be argued that no departure from principle is involved, inasmuch as unlike all other communities named they are not an integral part of the population of India, we prefer to rely upon nomination. Special electorates will no doubt be required for the representation of the planting and mining interests, for the chambers of commerce, and possibly also for the universities; but we desire that the number of such electorates should be as restricted as possible, and

that minority interests should, where necessary, be represented not by class or interest electorates, but by nomination. Where the great landowners form a distinct class in any province we think that there will be a case for giving them an electorate of their own. The anomaly involved in the presence of nominated members in a Council to which we are giving some responsible powers must, we think, be accepted as one of the necessary illogicalities attendant on a transitional period. Such nominations are made for a representative purpose and can be made in such a way as to secure representation. Nomination has in our eyes the great advantage over the alternative of extending the class or communal system that it can be more easily abolished when the necessity for it ceases. We look to the desire of the communities represented by nominated members to see their representatives in Council placed upon the same footing as those of other communities to help us in securing the extension of the territorial principle of representation wherever possible. . . .

Why
nomination
is preferred
to extension
of communal
system

5. MONT-FORD REPORT ON DEVOLUTION TO PROVINCIAL GOVERNMENTS.

200. We saw that the existing financial relations between the Central and Provincial Governments must be changed if the popular principle in government is to have fair play in the provinces. The settlements by which the Indian and Provincial Governments share the proceeds of certain heads of revenues are based primarily on the estimated needs of the provinces and the Government of India disposes of the surplus. This system necessarily involves control and interference by the Indian Government in provincial matters. An arrangement which has on the whole worked successfully between two official Governments would be quite impossible between a popular and an official Government. Our first aim has therefore been to find some means of entirely separating the resources of the Central and Provincial Governments.

Necessity of
financial
devolution

**New basis
of division
of financial
resources
between
Centre
and Pro-
vinces**

201. We start with a change of standpoint. If provincial autonomy is to mean anything real clearly the provinces must not be dependent on the Indian Government for the means of provincial developments. Existing settlements do indeed provide for ordinary growth of expenditure, but for any large and costly innovations Provincial Governments depend on doles out of the Indian surplus. Our idea is that an estimate should first be made of the scale of expenditure required for the upkeep and development of the services which clearly appertain to the Indian sphere; that resources with which to meet this expenditure should be secured to the Indian Government; and that all other revenues should then be handed over to the Provincial Governments, which will thenceforth be held wholly responsible for the development of all provincial services. This, however, merely means that the existing resources will be distributed on a different basis, and does not get over the difficulty of giving to the Central and Provincial Governments entirely separate resources. Let us see how this is to be done.

**Complete
separation
of revenues
desirable**

202. Almost everyone is agreed that a complete separation is in theory desirable. Such differences of opinion as we have met with have mostly been confined to the possibility of effecting it in practice. It has been argued for instance that it would be unwise to narrow the basis on which both the central and provincial fiscal systems are based. Some of the revenues in India, and in particular the land revenue and excise, have an element of precariousness; and the system of divided heads, with all its drawbacks, has the undeniable advantage that it spreads the risks. This objection will, however, be met if, as we claim, our proposed distribution gives both the Indian and the Provincial Governments a sufficient measure of security. Again we have been told that the complete segregation of the Government of India in financial matters will lower its authority. This argument applies to the whole subject of decentralization and provincial autonomy. It is not necessary for us

**Question of
lowering
authority
of Govern-
ment of
India**

to meet it further. Our whole scheme must be even and well balanced, and it would be ridiculous to introduce wide measures of administrative and legislative devolution and at the same time to retain a centralised system of finance.

203. There are two main difficulties about complete separation. How are we to dispose of the two most important heads which are at present divided—land revenue and income-tax—and how are we to supplement the yield of the Indian heads of revenue in order to make good the needs of the Central Government? At present the heads which are divided in all or some of the provinces are:—land-revenue, stamps, excise, income-tax and irrigation. About stamps and excise there is no trouble. We intend that the revenue from the stamp duty should be discriminated under the already well-marked sub-heads *General* and *Judicial*; and that the former should be made an Indian and the latter a provincial receipt. This arrangement will preserve uniformity in the case of commercial stamps where it is obviously desirable to avoid discrepancies of rates; and it will also give the provinces a free hand in dealing with Court-fee stamps, and thus provide them with an additional means of augmenting their resources. Excise is at present entirely a provincial head in Bombay, Bengal and Assam and we see no valid reason why it should not now be made provincial throughout India. At this stage the difficulties begin. Land revenue, which is by far the biggest head of all, is at present equally shared between the Indian and all the Provincial Governments, except that Burma gets rather more than one-half and the United Provinces gets rather less. Now land revenue assessment and collection is so intimately concerned with the whole administration in rural areas that the advantages of making it a provincial receipt are obvious. . . . We propose. . . . to make land-revenue, together with irrigation, wholly provincial receipts. It follows that the provinces will become entirely liable for expenditure in famine relief and protective irrigation works.

Heads of revenue which are divided

Proposals about division of heads of revenue between Centre and Provinces.

... The one remaining head is income-tax. We see too very strong reasons for making this an Indian receipt. . . . To sum up; we propose to retain the Indian and provincial heads as at present, but to add to the former income-tax and general stamps, and to the latter land-revenue, irrigation, excise, and judicial stamps. No heads will then remain divided.

* * * * *

**Provincial
budgets and
balances**

208. It follows from our proposed separation of revenues that there will in future be also a complete separation of the central and provincial budgets; and that the former will henceforward include only the direct transactions of the Government of India, and not as at present those of the provinces also. It likewise follows that there will be no more earmarking of any portion of provincial balances; and that portions previously earmarked will be available for general purposes.

**Legislative
devolution**

212. These measures will give Provincial Governments the liberty of financial action which is indispensable; but the provinces must also be secured against any unnecessary interference by the Government of India in the spheres of legislative and administrative business. It is our intention to

**Government
of India
should have
'a general
over-riding
power of
legislation'.**

reserve to the Government of India a general over-riding power of legislation for the discharge of all functions which it will have to perform. It should be enabled under this power to intervene in any province for the protection and enforcement of the interests for which it is responsible; to legislate on any provincial matter in respect of which uniformity of legislation is desirable either for the whole of India or for any two or more provinces; and to pass legislation which may be adopted either *simpliciter* or with modifications by any province which may wish to make use of it. We think that the Government of India must be the sole judge of the propriety of any legislation which it may undertake under any one of these categories, and that its competence so to legislate should not be open to challenge in the

**Legislative
power of
Provincial
Legislature**

courts. Subject to these reservations we intend that within the field which may be marked off for provincial legislative control the sole legislative power shall rest with the provincial Legislatures. The precise method by which this should be effected is a matter to be considered when the necessary statute is drafted, and we reserve our final opinion upon it. There are advantages in a statutory demarcation of powers such as is found in some federal constitutions, but we feel that if this is to leave the validity of the acts to be challenged in the courts on the ground of their being in excess of the powers of the particular Legislature by which they are passed, we should be subjecting every Government in the country to an almost intolerable harassment. Moreover, in India where the Central Government must retain large responsibilities, as for defence and law and order, a statutory limitation upon its legislative functions may be inexpedient. We have already referred to the fact that there has been growing up in India for some time a convention which by now has acquired no little strength to the effect that the Central Government shall not without strong reason legislate in the internal affairs of provinces. We think therefore that it may be better, instead of attempting to bar the legislative power of the Government of India in certain spheres of provincial business, to leave it to be settled as a matter of constitutional practice that the Central Government will not interfere in provincial matters unless the interests for which it is itself responsible are directly affected.

There should be no statutory demarcation of legislative powers between Centre and Provinces.

Division of legislative power between Centre and Provinces should be left to convention

213. The question of restraining the Central Government from administrative interference in the provinces is more difficult. We recognize that, in so far as the Provincial Governments of the future will still remain partly bureaucratic in character, there can be no logical reason for relaxing the control of superior official authority over them, nor indeed would any general relaxation be approved by Indian opinion; and that in this respect the utmost that can be justified is such modification of present methods

Administrative devolution :

(1) Provincial Governments in their bureaucratic aspects

(2) Provincial Governments in their popular aspects

of control as aims at getting rid of interference in minor matters, which might very well be left to the decision of the authority which is most closely acquainted with the facts. It is, however, in relation to Provincial Governments in their popular aspects that serious difficulties present themselves. So long as the Government of India itself is predominantly official in character and therefore, remains amenable to the Secretary of State, its interference in any matters normally falling within the range of popular bodies in the provinces involves a clash of principles which cannot fail to engender some heat, and the scope of which it is on all grounds desirable to keep within very closely defined bounds. At the same time we perceive that there are many matters which, taken in bulk, may reasonably be regarded as fitted for administration by popular bodies, but which have aspects that cannot fail to be of intimate concern to the Government which is responsible for the security or good administration of the whole country.

6. GOVERNMENT OF INDIA ON MONTFORD REPORT.

(Despatch to Secretary of State, March 5, 1919)

Reception of the Report by

(1) Non-official Europeans,

(2) 'extreme' Indians

Bengal

The Report itself was published in India on July 8, 1918; and you will expect us to give you as clear an impression as we can of its reception. The non-official European community took some time to form their opinions on proposals so intricate and so far-reaching. Indian opinion declared itself more rapidly, and from the first there ensued a clear division between the moderate and extreme political parties. The former declared definitely for the Report, with certain reservations; the latter against it. The strongest expression of the latter view occurred in a letter published even before the Report appeared, urging that anything which originates with foreigners should be rejected as violating the principle of self-determination. The most advanced Bengal politicians adopted an attitude of uncompromising opposition. In Madras the recognised leaders of the

advanced party had some difficulty in preventing the special conference which was held to consider the proposals from taking the same line. But the more responsible section of the party declared that, while the proposals were disappointing and unsatisfactory and required radical modifications before they could be held to constitute any substantial step towards responsible government, effort should be concentrated on obtaining such modifications rather than on the wholesale rejection of the scheme. The attitude of the moderate party, which we believe includes the ablest and most respected Indian opinion, was far more favourable to the Report. They welcomed its proposals as a real and substantial step towards the progressive realisation of responsible government in the provinces, and the modifications which they urged were, with the exception of those affecting the Government of India, concerned with the details rather than the essentials of the scheme. Opinion of this sort is fairly represented by the resolutions recorded by the majority of the non-official members of the Indian Legislative Council. . . . The independent line adopted by the moderates had for some time a restraining influence on the other party. The tendency which had at first been apparent to flout temperate opinion gave place to a desire for conciliation; and at the last moment efforts were made to induce the moderates to attend the special congress held at Bombay towards the end of August to consider the proposals. These efforts failed, but the abstention of the majority of moderates was not without effect. The leaders of the special congress made an appeal to moderates throughout the country to rally to the national association. There was no talk of rejecting the reform proposals. They were still declared. . . . to be disappointing and unsatisfactory; but the general decision was that with somewhat radical alterations they could be accepted as forming a substantial step towards responsible government. The change of tone did not persuade the moderates to come in, and they held a conference of their own at Bombay early in November. . . . The last of this

Madras

(3) 'moderate' Indians

Indian Legislative Council

Congress

series of meetings was the ordinary session of the Congress which met at Delhi in December. The spirit of toleration was no longer in the ascendant and in spite of all efforts to the contrary the most radical elements of the extreme party threw over most of their recognised leaders, and advanced claims far beyond any made at Bombay by demanding the grant of full responsible government in the provinces at once.

Points of
agreement
between
'moderates'
and
'extremists'

Thus it may be said that while the most vocal sections of Indian opinion unite in claiming a further advance than has been proposed in the Report, there are between the attitude of the moderates and that of the more extreme politicians marked differences which we shall now explain. Both parties agree in urging that changes giving some measure of popular control should be introduced into the Government of India from the outset: and that the Government of India, acting under the control of the legislature, should enjoy the same power of regulating the fiscal policy of this country as the Governments of the self-governing Dominions. There are also numerous points of agreement in matters of detail; but in regard to such questions of fundamental importance as the Council of State, the Grand Committee¹, the budget procedure, the relations of the Governor to his ministers, and a statutory guarantee for the grant of full responsible government within a fixed period, the two parties take very different lines. The extreme party would have no Council of State and no Grand Committee; and they desire to give the legislature complete control over the budget, and to make the Governor a purely constitutional Governor in relation to his ministers. As these demands, if satisfied, would give them complete control over legislation and finance, it makes little difference whether they claim complete responsible government at once or after a limited period. On the other hand the moderates accept the principle of dualism in government, and in

Points of
difference
between
'moderates'
and
'extremists'

¹ For the constitution and functions of the Grand Committee, see *Mont-Ford Report*, pp. 161-162.

the provincial sphere they merely press for such changes in detail as equality of status between councillors and ministers, reconsideration of the proposal to appoint additional members without portfolios, the selection of heads of provinces from the ranks of public men in England, complete provincial autonomy in respect of transferred subjects, and the largest possible extension of the list of transferred subjects. Another phase of opinion, however, is represented by the memorial. . . . from certain land-holding members of the Indian Legislative Council who ask that progress should partly take the form of converting the leading zamindars into independent chiefs: a proposal clearly not in keeping with the principles set forth by His Majesty's Government. The great majority of the landholding class are more conservative. They have said little in public and are doubtful of their own preparedness to take their proper place in the forward movement. But they are unmistakably proud that India has been offered this signal mark of confidence, and in no sense hostile.

**Demands of
Zamindars**

The non-official European community was at first disposed to question the wisdom of raising the subject of reforms during the war, but with the change in the situation in Europe this criticism lost much of its force. There is dissatisfaction with the proposal that the community, which forms the only element in the population accustomed to the working of responsible government, should not elect its own representatives on the provincial councils. They claim a separate electorate and representation in proportion to their importance rather than their numerical strength; and they doubt whether even this will sufficiently secure the interests of trade and industry. They think that the scheme as a whole is ingenious but too complex; and they fear that it may result in the transfer of power to the advanced political section to the detriment of the masses, who have no desire for any change in the system of government. They also dwell on the difficulty of presenting their opinion until the proposals in respect of electorates and the division of functions have been completed.

**Demands of
non-official
Europeans**

**Official
opinion****Why
officials
criticise the
Reform
scheme****Views of
the 'best
elements'
among
officials****Opinions
of Local
Govern-
ments**

Official opinion can be gauged only from individual deliverances. It is generally critical of the scheme; but we desire to take this opportunity of controverting the suggestion that has found some currency in this country that the criticism proceeds from a purely selfish point of view. Such a view is unfair to a body of men who have served India faithfully and have its real welfare strongly at heart. There is no justification for the charge that searching criticism of the particular proposals in the Report implies any opposition to the underlying policy. The difficulties of the problem loom large with those on whom the burden of administration now rests; and it is, we believe, their pride in and affection for their work which has made them the most anxious critics of far-reaching innovations. The permanent British official in India has not as a rule taken any part in the democratic institutions of his own land, and is frankly sceptical of their suitability to an eastern country. By the nature of his work, he comes into touch with the vast masses of the people, who have no political aspirations, rather than with the more advanced thinkers. He apprehends that the former will suffer from the administrative inexperience of the latter; and he is anxious for safeguards which will protect them, while at the same time securing the standards of thoroughness and impartiality in public business to which he has been trained. By all the best elements in this class, the declaration of August, 1917, is accepted, and the need for advance is admitted; but the proposals of the Report are commonly criticised as going beyond the present needs of India.

The cautions of the official mind are crystallized in the opinions of the Local Governments. On their first perusal it must have disappointed the authors of the Report to find that the Provincial Governments had devoted themselves so largely to destructive criticism. We do not think, however, that this was unnatural. Their opportunities for constructive work had come earlier; and their proposals, both individually and at the conference of Heads of provinces which met His Excellency and yourself in January,

1918, had been among the materials on which the conclusions embodied in the Report were based. They might thus not unreasonably feel that there was no further occasion for them to set out alternative schemes; and that the best service they could render us was to apply themselves to a vigorous and searching examination of the Report in detail. In this task, whether we agree with them or not, we must recognize the weight of their influence. The Local Governments are repositories of practical first-hand experience of the working of the administrative machine. They know its limits and its possibilities, and the attitude of different sections of the people towards it. They can speak with intimate knowledge upon much that in the Report had to be dealt with on very general considerations. We feel that we owe all respect to their criticisms in detail Their great value has been, not to throw doubt on the principles which we accept and which their examination has in no wise shaken, but to make us pause and remove defects which such examination reveals

**Value of
the criticism of
Local
Govern-
ments**

Lastly we come to a statement of our own position. When these questions of constitutional reform were under consideration last year the main responsibility rested upon the two authors of the Report. The members of the Government of India were indeed kept in close touch with the deliberations and no important conclusions were arrived at without reference to them. They have also in their despatch no. 6, dated May 31, 1918, cordially supported the general policy which the Report embodies. We take our stand on that despatch. We are convinced that the time has come for the definition of our goal in India; and we can conceive no other goal, consistent with the ideals of British history, except that the people of India, helped and guided by us, should learn to govern themselves. Whether their national life will flow into the precise constitutional moulds to which Englishmen by tradition are attached, or whether—as we think equally possible—it will ultimately work out for itself free institutions of a distinctive type, time alone

**Opinion of
Government
of India**

**Indians
should be
taught to
govern
themselves.**

**'Generous'
concessions
required**

**No ground
for delay**

**Indian co-
operation
expected**

**Dyarchy
acceptable
to Govern-
ment of
India**

can tell. Nor need we speculate whether India is going to borrow our history. Our clear duty is to put her into the way which we believe to be the best, and to allow the character of the nation, as it grows and is welded by experience and trial, to deflect our present methods gradually and intelligently towards ideals which it will adopt as its own. We regard it as beyond question that the first stage of advance must be a generous one, undertaken at the earliest possible moment. To postpone it now would be a confession of mistrust of our own work, and would alienate those classes in the country to whom we must look for the leadership of the new movement. We should particularly deplore any argument for delay, based on disclosures of revolutionary conspiracies which are utterly foreign to the real life of the people, and confined to an inconsiderable section. We believe indeed that, while it is necessary to deal firmly with crime arising out of these conspiracies, repressive measures, unless coupled with definite steps in the direction of political advance, can provide only a temporary remedy. There probably would be no point of time at which we should not feel that something still remained to be done by way of preparation for the beginnings of popular administration; but we must trust to perfect our work in co-operation with Indian public men, and we must be content to believe that we have laid our foundations well, and that they will bear the new superstructure. In all this we feel that we are moving with a spirit which is stronger than our calculations; and we accept whatever lies ahead. But that consideration only adds to the weight of responsibility which lies upon us when we come to advise upon the details of the plan of advance. To the form of provincial government which the Report sets up as the main vehicle of progress we have nothing to oppose; we have seen no alternative which in any way competes with it. But we can best fulfil our task and discharge our responsibility by helping you to develop the new system into a working proposition. It is a novelty in constitutions; and none of us can prophesy the manner of its growth. But there are to our minds

certain universal tests of administrative machinery: its smoothness or friction in working, its burdensomeness on the people or the reverse, its educative value, and its capacity for further development. To every detail of the scheme therefore we have applied these tests, and our advice is based on its response to them. It has been no purpose of ours either to whittle down the scheme or to expand it. We take the scheme in the Report as one which, in all essentials, has our full adherence; and our sole aim has been to translate it into a working plan which, while free from obvious defects, will be in accord with the policy of His Majesty's Government.

**'Tests of
administra-
tive
machinery'**

7. SIMON COMMISSION ON DIFFERENCES BETWEEN THE MONT-FORD REPORT AND THE GOVERNMENT OF INDIA ACT, 1919.

140. It is important to bear in mind that the recommendations of the Montagu-Chelmsford Report were not in all respects adopted and carried out by the sections of the Government of India Act, 1919. The Bill, as introduced, represented the result of discussions which had taken place between the Government of India, the Provincial Governments, and the Imperial Government. In the course of its passage through Parliament it was amended in some material respects in accordance with the recommendations of the Joint Select Committee of both Houses of Parliament to which it was referred, of which Committee Mr. Montagu was an influential member. For example, the Report devised a plan by which the Government of India could secure the passage of legislative measures which it regarded as essential, notwithstanding the opposition of the majority of the Legislative Assembly, by carrying its Bill through an Upper House in which there was an official majority: The Viceroy's assent to a measure so carried through the Upper House nullified the effect of its rejection by the Lower House The Lower House would have enjoyed increased "opportunities of influencing Government," but the authority of the Government

**Mont-Ford
Report
modified
as a result
of discus-
sions
between
Government
of India,
Provincial
Govern-
ments and
'Home'
Government.**

**Procedure of
legislation
changed
by Joint
Select
Committee :**

**(i) Central
Legislature**

**(ii) Provin-
cial Legis-
lature**

of India "in essential matters" nevertheless would remain "indisputable."¹⁰ It was manifestly an important alteration for the Joint Select Committee to modify the scheme, as it did, by making the assent of the Legislative Assembly essential to the passage of all legislation, subject to the power of the Governor-General in case of emergency to place a new law upon the Statute Book, by mere certification, with or without the assent of the Council of State, and without any concurrence from the other branch of the Legislature. The Act of 1919 contained other departures from the scheme of the Report. We will give two further examples. In the realm of provincial government, Mr. Montagu and Lord Chelmsford had proposed that if the Provincial Government found it impossible to carry through the unicameral provincial council legislation of a certain character which the Governor deemed essential, the Bill might be referred to a Grand Committee constituted for the purpose, composed in part of members selected by the provincial council, but with a nominated majority. The view of this Grand Committee would ultimately prevail, even though the provincial legislature remained obdurate. All this was rejected by the Joint Select Committee on the ground that it was better, in cases where the ultimate responsibility rested with the Governor and his Executive Council, for the overriding of the legislature to take place, without disguise, by the direct method of certification. It will be observed that this change made by the Joint Select Committee in the provincial sphere is analogous to the departure from the scheme of the Joint Report, described in the central sphere.

**Procedure
regarding
budget
(i) suggested
by the
Report**

A second illustration, which is of great importance to show how widely the Government of India Act departed in some respects from the recommendations of the Joint Report, is concerned with the budget. Mr. Montagu and Lord Chelmsford laid it down that "the budget will be introduced in the Legislative Assembly, but the Assembly will not vote it. Resolutions upon budget matters and upon all

other questions, whether moved in the Assembly or in the Council of State, will continue to be advisory in character."

The Government of India Bill was introduced into Parliament with a clause drafted to correspond with this recommendation, but the Joint Select Committee altered this, and in its Report to the two Houses of Parliament pointed attention to the insertion of "a new provision for the submission of the Indian Budget to the vote of the Legislative Assembly." These matters may now be regarded as of little more than historic interest, but we think that it is not without importance to bear in mind that the Act of 1919 did not in these, and some other respects follow the plan of the Joint Report. Mr. Montagu, as we have already said, was a member of the Joint Select Committee, and, as far as we know, concurred in the changes.

(ii) modified
by Joint
Select
Committee

But in most respects the scheme of the Montagu-Chelmsford Report was translated into law

8. GOVERNMENT OF INDIA ACT,¹ 1919. (9 & 10 Geo. 5, c. 101)

Whereas it is the declared policy of Parliament to provide for the increasing association of Indians in every branch of Indian administration, and for the gradual development of self-governing institutions, with a view to the progressive realization of responsible government in British India as an integral part of the empire:

Preamble

Political
goal of
India

And whereas progress in giving effect to this policy can only be achieved by successive stages, and

Goal to be
reached by
'successive
stages'

¹ "The Principal Act was the Government of India Act of 1915. It was called 'The Government of India Acts of 1915 and 1916' after the amending Act of 1916 was passed. The Act embodying the Reform Proposals is called 'The Government of India Act, 1919'. The principal Act of 1915 as amended by the subsequent amending Acts of 1916 and 1919 is to be cited simply as 'The Government of India Act'. See Sec. 47 of the Government of India Act, 1919".—P. Mukherji, *The Indian Constitution*, p. 14.

it is expedient that substantial steps in this direction should now be taken:

**Discretion
and
responsi-
bility of
Parliament**

And whereas the time and manner of each advance can be determined only by Parliament, upon whom responsibility lies for the welfare and advancement of the Indian peoples:

**Progress to
depend on
Indian
co-operation**

And whereas the action of Parliament in such matters must be guided by the co-operation received from those on whom new opportunities of service will be conferred, and by the extent to which it is found that confidence can be reposed in their sense of responsibility:

**Concession
to Provin-
cial
Govern-
ments**

And whereas concurrently with the gradual development of self-governing institutions in the provinces of India it is expedient to give to those Provinces in provincial matters the largest measure of independence of the Government of India, which is compatible with the due discharge by the latter of its own responsibilities:

Be it therefore enacted as follows:

PART I

LOCAL GOVERNMENTS

Classification of Central and Provincial Subjects

1. (1) Provision may be made by rules under the Government of India Act, 1915, as amended by the Government of India (Amendment) Act, 1916 (which Act so amended is in this Act referred to as 'the Principal Act'):

**Central and
Provincial
subjects**

(a) for the classification of subjects, in relation to the functions of government, as central and provincial subjects, for the purpose of distinguishing the functions of Local Governments and Local Legislatures from the functions of the Governor-General in Council and the Indian Legislature;

**Devolution
of authority
to Local
Govern-
ments**

(b) for the devolution of authority in respect of provincial subjects to Local Governments, and for the allocation of revenues or other moneys to those Governments;

(c) for the use under the authority of the Governor-General in Council of the agency of Local Governments in relation to central subjects, in so far as such agency may be found convenient, and for determining the financial conditions of such agency; and

(d) for the transfer from among the provincial subjects of subjects (in this Act referred to as 'transferred subjects') to the administration of the Governor acting with Ministers appointed under this Act, and for the allocation of revenues or moneys for the purpose of such administration.

(2) Without prejudice to the generality of the foregoing powers, rules made for the above-mentioned purposes may—

(i) regulate the extent and conditions of such devolution, allocation and transfer;

(ii) provide for fixing the contributions payable by Local Governments to the Governor-General in Council, and making such contributions a first charge on allocated revenues or moneys;

(iii) provide for constituting a finance department in any province, and regulating the functions of that department;

(iv) provide for regulating the exercise of the authority vested in the Local Government of a province over members of the public Service therein;

(v) provide for the settlement of doubts arising as to whether any matter does or does not relate to a provincial subject or a transferred subject, and for the treatment of matters which affect both a transferred subject and a subject which is not transferred; and

(vi) make such consequential and supplemental provisions as appear necessary or expedient;

Provided that, without prejudice to any general power of revoking or altering rules under the Principal Act, the rules shall not authorise the revocation or suspension of the transfer of any subject except with the sanction of the Secretary of State in Council.

'Superintendence, direction and control' of Governor-General in Council

(3) The powers of superintendence, direction and control over Local Governments vested in the Governor-General in Council under the Principal Act shall, in relation to transferred subjects, be exercised only for such purposes as may be specified in rules made under that Act, but the Governor-General in Council shall be the sole judge as to whether the purpose of the exercise of such powers in any particular case comes within the purposes so specified.

(4) The expressions 'central subjects' and 'provincial subjects' as used in this Act mean subjects so classified under the rules.

'Reserved' subjects

Provincial subjects, other than transferred subjects, are in this Act referred to as 'reserved subjects.'

Revised System of Local Government in certain Provinces

Governors' Provinces

Governor in Council

Governor acting with Ministers

3. (1) The Presidencies of Fort William in Bengal, Fort St. George, and Bombay, and the provinces known as the United Provinces, the Punjab, Bihar and Orissa, the Central Provinces, and Assam, shall each be governed, in relation to reserved subjects, by a Governor in Council, and in relation to transferred subjects (save as otherwise provided by this Act) by the Governor acting with Ministers appointed under this Act.

The said Presidencies and provinces are in this Act referred to as 'Governor's provinces' and two first-named presidencies are in this Act referred to as the presidencies of Bengal and Madras.

Appointment of Governors of certain Provinces

(2) The provisions of sections forty-six to fifty-one of the Principal Act, as amended by this Act, shall apply to the United Provinces, the Punjab, Bihar and Orissa, the Central Provinces, and Assam, as they apply to the Presidencies of Bengal, Madras, and Bombay: Provided that the Governors of the said Provinces shall be appointed after consultation with the Governor-General.

Appointment of Ministers and Council Secretaries

4. (1) The Governor of a Governor's province may, by notification, appoint Ministers, not being members of his Executive Council or other officials, to administer transferred subjects, and any Ministers so appointed shall hold office during his pleasure.

Minister to hold office during Governor's pleasure

There may be paid to any Minister so appointed in any province the same salary as is payable to a member of the Executive Council in that province, unless a smaller salary is provided by vote of the Legislative Council of the province.

(2) No Minister shall hold office for a longer period than six months, unless he is or becomes an elected member of the local legislature.

(3) In relation to transferred subjects, the Governor shall be guided by the advice of his Ministers, unless he sees sufficient cause to dissent from their opinion, in which case he may require action to be taken otherwise than in accordance with that advice: Provided that rules may be made under the Principal Act for the temporary administration of a transferred subject where, in cases of emergency, owing to a vacancy, there is no Minister in charge of the subject, by such authority and in such manner as may be prescribed by the rules.

Relation between Governor and Ministers

'Temporary administration' of transferred subjects in emergencies

Qualification of Members of Local Executive Councils

5. (1) The provision in section forty-seven of the Principal Act, that two of the members of the Executive Council of the Governor of a province must have been for at least twelve years in the service of the Crown in India, shall have effect as though 'one' were substituted for 'two', and the provision in that section that the Commander-in-Chief of His Majesty's Forces in India, if resident at Calcutta, Madras, or Bombay, shall, during his continuance there, be a member of the Governor's Council, shall cease to have effect.

Commander-in-chief not to be member of Governor's Council

Qualifications of Executive Councillors

(2) Provision may be made by rules under the Principal Act as to the qualifications to be required in respect of members of the Executive Council of the Governor of a province in any case where such provision is not made by section forty-seven of the Principal Act as amended by this section.

Business of Governor in Council and Governor with Ministers

6. (1) All orders and other proceedings of the Government of a Governor's province shall be expressed to be made by the Government of the province, and shall be authenticated as the Governor may by rule direct, so, however, that provision shall be made by rule for distinguishing orders and other proceedings relating to transferred subjects from other orders and proceedings.

Orders and proceedings authenticated as aforesaid shall not be called into question in any legal proceedings on the ground that they were not duly made by the Government of the province.

Governor may make rules for the more convenient transaction of business.

(2) The Governor may make rules and orders for the more convenient transaction of business in his Executive Council and with his Ministers, and every order made or act done in accordance with those rules and orders shall be treated as being the order or the act of the Government of the province.

The Governor may also make rules and orders for regulating the relations between his Executive Council and his Ministers for the purpose of the transaction of the business of the Local Government:

Provided that any rules and orders made for the purposes specified in this section which are repugnant to the provisions of any rules made under the Principal Act as amended by this Act shall, to the extent of that repugnancy, but not otherwise, be void.

Composition of Governors' Legislative Councils

7. (1) There shall be a Legislative Council in every Governor's province, which shall consist of the members of the Executive Council and of members nominated or elected as provided by this Act.

The Governor shall not be a member of the Legislative Council, but shall have the right of addressing the Council, and may for that purpose require the attendance of its members.

(2) The number of members of the Governors' Legislative Councils shall be in accordance with the table set out in the First Schedule to this Act; and of the members of each Council not more than twenty per cent. shall be official members, and at least seventy per cent. shall be elected members:

Proportion
of official
and elected
members

Provided that

(a) subject to the maintenance of the above proportions, rules under the Principal Act may provide for increasing the number of members of any Council, as specified in that schedule; and

(b) the Governor may, for the purposes of any Bill introduced or proposed to be introduced in his Legislative Council, nominate, in the case of Assam one person, and in the case of other provinces not more than two persons, having special knowledge or experience of the subject-matter of the Bill, and those persons shall, in relation to the Bill, have for the period for which they are nominated all the rights of members of the Council, and shall be in addition to the numbers above referred to; and

Provisions
for
increasing
number of
members of
Council

(c) members nominated to the Legislative Council of the Central Provinces by the Governor as the result of elections held in the Assigned Districts of Berar shall be deemed to be elected members of the Legislative Council of the Central Provinces.

Berar

(3) The powers of a Governor's Legislative Council may be exercised notwithstanding any vacancy in the Council.

(4) Subject as aforesaid, provision may be made by rules under the Principal Act as to

(a) the term of office of nominated members of Governors' Legislative Councils, and the manner

Nominated
members

of filling casual vacancies occurring by reason of absence of members from India, inability to attend to duty, death, acceptance of office, resignation duly accepted, or otherwise; and

(b) the conditions under which and manner in which persons may be nominated as members of Governors' Legislative Councils; and

**Details
regarding
elections to
Councils**

(c) the qualification of electors, the constitution of constituencies, and the method of election for Governors' Legislative Councils, including the number of members to be elected by communal and other electorates, and any matters incidental and ancillary thereto; and

(d) the qualifications for being and for being nominated or elected a member of any such Council; and

(e) the final decision of doubts or disputes as to the validity of any election; and

(f) the manner in which the rules are to be carried into effect:

Provided that rules as to any such matters as aforesaid may provide for delegating to the Local Government such power as may be specified in the rules of making subsidiary regulations affecting the same matters.

(5) Subject to any such rules, any person who is a ruler or subject of any State in India may be nominated as a member a Governor's Legislative Council.

* * * * *

Powers of local Legislatures

**Legislative
power of
Councils**

10. (1) The local Legislature of any province has power, subject to the provisions of this Act, to make laws for the peace and good government of the territories for the time being constituting that province.

(2) The local Legislature of any province may, subject to the provisions of the sub-section next

INDIAN CONSTITUTIONAL DOCUMENTS

following, repeal or alter as to that province any law made either before or after the commencement of this Act by any authority in British India other than that local Legislature.

(3) The local Legislature of any province may not, without the previous sanction of the Governor-General, make or take into consideration any law—

(a) imposing or authorising the imposition of any new tax unless the tax is a tax scheduled as exempted from this provision by rules made under the Principal Act; or

(b) affecting the public debt of India, or the customs duties, or any other tax or duty for the time being in force and imposed by the authority of the Governor-General in Council for the general purposes of the Government of India, provided that the imposition or alteration of a tax scheduled as aforesaid shall not be deemed to affect any such tax or duty; or

(c) affecting the discipline or maintenance of any part of His Majesty's naval, military or air forces; or

(d) affecting the relations of the Government with foreign princes or States; or

(e) regulating any central subject; or

(f) regulating any provincial subject which has been declared by rules under the Principal Act to be, either in whole or in part, subject to legislation by the Indian Legislature, in respect of any matter to which such declaration applies; or

(g) affecting any power expressly reserved to the Governor-General in Council by any law for the time being in force; or

(h) altering or repealing the provisions of any law which, having been made before the commencement of this Act by any authority in British India other than that local Legislature, is declared by rules under the Principal Act to be a law which

Previous
sanction of
Governor-
General
required for
legislation
by Provin-
cial
Councils
on certain
subjects

cannot be repealed or altered by the local Legislature without previous sanction; or

(i) altering or repealing any provision of an Act of the Indian Legislature made after the commencement of this Act, which by the provisions of that Act may not be repealed or altered by the local Legislature without previous sanction:

Provided that an Act or a provision of an Act made by a local Legislature, and subsequently assented to by the Governor-General in pursuance of this Act, shall not be deemed invalid by reason only of its requiring the previous sanction of the Governor-General under this Act.

(4) The local Legislature of any province has not power to make any law affecting any Act of Parliament.

*Business and procedure in Governors'
Legislative Councils*

11. (1) Sub-sections (1) and (3) of section eighty of the Principal Act (which relate to the classes of business which may be transacted at meetings of local Legislative Council) shall cease to apply to a Governor's Legislative Council, but the business and the procedure in any such Council shall be regulated in accordance with the provisions of this section.

**Provision
about
Budget**

(2) The estimated annual expenditure and revenue of the province shall be laid in the form of a statement before the Council in each year, and the proposals of the Local Government for the appropriation of provincial revenues and other moneys in any year shall be submitted to the vote of the Council in the form of demands for grants. The Council may assent, or refuse its assent, to a demand, or may reduce the amount therein referred to either by a reduction of whole grant or by the omission or reduction of any of the items of expenditure of which the grant is composed:

Provided that—

(a) The Local Government shall have power, in relation to any such demand, to act as if it had been assented to, notwithstanding the withholding of such assent or the reduction of the amount therein referred to, if the demand relates to a reserved subject, and the Governor certifies that the expenditure provided for by the demand is essential to the discharge of his responsibility for the subject; and

Governor's
special
powers
about
finance

(b) the Governor shall have power in cases of emergency to authorise such expenditure as may be in his opinion necessary for the safety or tranquillity of the province, or for the carrying on of any department; and

(c) no proposal for the appropriation of any such revenues or other moneys for any purpose shall be made except on the recommendation of the Governor, communicated to the Council.

(3) Nothing in the foregoing sub-section shall require proposals to be submitted to the Council relating to the following heads of expenditure:

Some heads
of expenditure
excluded
from jurisdiction
of Council

(i) contributions payable by the Local Government to the Governor-General in Council; and

(ii) interest and sinking fund charges on loans; and

(iii) expenditure of which the amount is prescribed by or under any law; and

(iv) salaries and pensions of persons appointed by or with the approval of His Majesty or by the Secretary of State in Council; and

(v) salaries of judges of the High Court of the province and of the Advocate-General.

If any question arises whether any proposed appropriation of moneys does or does not relate to the above heads of expenditure, the decision of the Governor shall be final.

(4) Where any Bill has been introduced or is proposed to be introduced, or any amendment to a

**Governor's
special
powers
about
legislation**

Bill is moved or proposed to be moved, the Governor may certify that the Bill or any clause of it or the amendment affects the safety or tranquillity of his province or any part of it or of another province, and may direct that no proceedings or no further proceedings shall be taken by the Council in relation to the Bill, clause or amendment, and effect shall be given to any such direction.

Return and reservation of Bills

**Bill may be
reserved for
considera-
tion of
(1) Gover-
nor-General,**

12. (1) Where a Bill has been passed by a local Legislative Council, the Governor, Lieutenant-Governor, or Chief Commissioner may, instead of declaring that he assents to or withholds his assent from the Bill, return the Bill to the Council for reconsideration, either in whole or in part, together with any amendments which he may recommend, or, in cases prescribed by rules under the Principal Act may, and if the rules so require shall, reserve the Bill for the consideration of the Governor-General.

**(2) His
Majesty**

(3) The Governor-General may (except where the Bill has been reserved for his consideration), instead of assenting to or withholding his assent from any Act passed by a local Legislature, declare that he reserves the Act for the signification of His Majesty's pleasure thereon, and in such case the Act shall not have validity until His Majesty in Council has signified his assent and his assent has been notified by the Governor-General.

*Provision for case of failure to pass legislation in
Governors' Legislative Councils*

**Governor's
Act**

13. (1) Where a Governor's Legislative Council has refused leave to introduce, or has failed to pass in a form recommended by the Governor, any Bill relating to a reserved subject, the Governor may certify that the passage of the Bill is essential for the discharge of his responsibility for the subject, and thereupon the Bill shall, notwithstanding that the Council have not consented thereto, be deemed to have passed, and shall, on signature by the Governor,

become an Act of the local Legislature in the form of the Bill as originally introduced or proposed to be introduced in the Council or (as the case may be) in the form recommended to the Council by the Governor.

(2) Every such Act shall be expressed to be made by the Governor, and the Governor shall forthwith send an authentic copy thereof to the Governor-General, who shall reserve the Act for the signification of His Majesty's pleasure, and upon the signification of such assent by His Majesty in Council, and the notification thereof by the Governor-General, the Act shall have the same force and effect as an Act passed by the local Legislature and duly assented to:

Assent of
His Majesty
in Council
required for
Governor's
Act

Provided that, where in the opinion of the Governor-General a state of emergency exists which justifies such action, he may, instead of reserving such Act, signify his assent thereto, and thereupon the Act shall have such force and effect as aforesaid, subject however to disallowance by His Majesty in Council.

Governor's
Act may be
assented
to by
Governor-
General in
case of
emergency.

(3) An Act made under this section shall, as soon as practicable after being made, be laid before each House of Parliament, and an Act which is required to be presented for His Majesty's assent shall not be so presented until copies thereof have been laid before each House of Parliament for not less than eight days on which that House has sat.

Constitution of new provinces, &c., and provision as to backward tracts

15. (1) The Governor-General in Council may, after obtaining an expression of opinion from the Local Government and the local Legislature affected, by notification, with the sanction of His Majesty previously signified by the Secretary of State in Council, constitute a new Governor's province, or place part of a Governor's province under the administration of a Deputy-Governor to be appointed

Creation of
new
Governor's
province

by the Governor-General, and may in any such case apply, with such modifications as appear necessary or desirable, all or any of the provisions of the Principal Act or this Act relating to Governors' provinces, or provinces under a Lieutenant-Governor or Chief Commissioner, to any such new province or part of a province.

**Declaration
of 'back-
ward tract'**

**Administra-
tion of
'backward
tracts'**

(2) The Governor-General in Council may declare any territory in British India to be a 'backward tract', and may, by notification, with such sanction as aforesaid, direct that the Principal Act and this Act shall apply to that territory subject to such exceptions and modifications as may be prescribed in the notification. Where the Governor-General in Council has, by notification, directed as aforesaid, he may, by the same or subsequent notification, direct that any Act of the Indian Legislature shall not apply to the territory in question or any part thereof, or shall apply to the territory or any part thereof subject to such exceptions or modifications as the Governor-General thinks fit, or may authorise the Governor in Council to give similar directions as respects any Act of the local Legislature.

PART II

GOVERNMENT OF INDIA

Indian Legislature

**Composi-
tion of
Indian
Legislature**

17. Subject to the provisions of this Act, the Indian Legislature shall consist of the Governor-General and two chambers, namely, the Council of State and the Legislative Assembly.

Except as otherwise provided by or under this Act, a Bill shall not be deemed to have been passed by the Indian Legislature unless it has been agreed to by both chambers, either without amendment or with such amendments only as may be agreed to by both chambers.

Council of State

18. (1) The Council of State shall consist of not more than sixty members nominated or elected in accordance with rules made under the Principal Act, of whom not more than twenty shall be official members.

**Composi-
tion of
Council of
State**

(2) The Governor-General shall have power to appoint from among the members of the Council of State, a President and other persons to preside in such circumstances as he may direct.

**President
of Council
of State**

(3) The Governor-General shall have the right of addressing the Council of State, and may for that purpose require the attendance of its members.

Legislative Assembly

19. (1) The Legislative Assembly shall consist of members nominated or elected in accordance with rules made under the Principal Act.

**Composi-
tion of
Legislative
Assembly**

(2) The total number of members of the Legislative Assembly shall be one hundred and forty. The number of non-elected members shall be forty, of whom twenty-six shall be official members. The number of elected members shall be one hundred:

**Proportion
of official
and elected
members**

Provided that rules made under the Principal Act may provide for increasing the number of members of the Legislative Assembly as fixed by this section, and may vary the proportion which the classes of members bear one to another, so, however, that at least five-sevenths of the members of the Legislative Assembly shall be elected members, and at least one-third of the other members shall be non-official members.

(3) The Governor-General shall have the right of addressing the Legislative Assembly, and may for that purpose require the attendance of its members.

* * * *

Indian Budget

25. (1) The estimated annual expenditure and revenue of the Governor-General in Council shall be

laid in the form of a statement before both chambers of the Indian Legislature in each year.

(2) No proposal for the appropriation of any revenue or moneys for any purpose shall be made except on the recommendation of the Governor-General.

Heads of expenditure which are not subject to vote of Legislative Assembly

(3) The proposals of the Governor-General in Council for the appropriation of revenue or moneys relating to the following heads of expenditure shall not be submitted to the vote of the Legislative Assembly, nor shall they be open to discussion by either chamber at the time when the annual statement is under consideration, unless the Governor-General otherwise directs—

(i) interest and sinking fund charges on loans; and

(ii) expenditure of which the amount is prescribed by or under any law; and

(iii) salaries and pensions of persons appointed by or with the approval of His Majesty or by the Secretary of State in Council; and

(iv) salaries of Chief Commissioners and Judicial Commissioners; and

(v) expenditure classified by the order of the Governor-General in Council as—

(a) ecclesiastical;

(b) political;

(c) defence.

(4) If any question arises whether any proposed appropriation of revenue or moneys does or does not relate to the above heads, the decision of the Governor-General on the question shall be final.

'Demands for grants'

(5) The proposals of the Governor-General in Council for the appropriation of revenue or moneys relating to the heads of expenditure not specified in the above heads shall be submitted to the vote of the Legislative Assembly in the form of demands for grants.

(6) The Legislative Assembly may assent or refuse its assent to any demand or may reduce the amount referred to in any demand by a reduction of the whole grant.

Financial powers of Legislative Assembly

(7) The demands as voted by the Legislative Assembly shall be submitted to the Governor-General in Council, who shall, if he declares that he is satisfied that any demand which has been refused by the Legislative Assembly is essential to the discharge of his responsibilities, act as if it had been assented to, notwithstanding the withholding of such assent, or the reduction of the amount therein referred to, by the Legislative Assembly.

Special powers of Governor-General about finance

(8) Notwithstanding anything in this section, the Governor-General shall have power, in cases of emergency, to authorise such expenditure as may, in his opinion, be necessary for the safety or tranquillity of British India or any part thereof.

Provision for case of failure to pass legislation

26. (1) Where either chamber of the Indian Legislature refuses leave to introduce, or fails to pass in a form recommended by the Governor-General, any Bill, the Governor-General may certify that the passage of the Bill is essential for the safety, tranquillity or interests of British India or any part thereof, and thereupon—

(a) If the Bill has already been passed by the other chamber, the Bill shall, on signature by the Governor-General, notwithstanding that it has not been consented to by both chambers, forthwith become an Act of the Indian Legislature in the form of the Bill as originally introduced or proposed to be introduced in the Indian Legislature, or (as the case may be) in the form recommended by the Governor-General; and

Governor-General's special legislative powers

(b) If the Bill has not already been so passed, the Bill shall be laid before the other chamber, and, if consented to by that chamber in the form recommended by the Governor-General, shall become an

Before any rules are made under this section relating to subjects other than transferred subjects, the rules proposed to be made shall be laid in draft before both Houses of Parliament, and such rules shall not be made unless both Houses by resolution approve the draft either without modification or addition, or with modifications or additions to which both Houses agree, but upon such approval being given the Secretary of State in Council may make such rules in the form in which they have been approved, and such rules on being so made shall be of full force and effect.

Any rules relating to transferred subjects made under this section shall be laid before both Houses of Parliament as soon as may be after they are made, and, if an address is presented to His Majesty by either House of Parliament within the next thirty days on which that House has sat after the rules are laid before it praying that the rules or any of them may be annulled, His Majesty in Council may annul the rules or any of them, and those rules shall thenceforth be void, but without prejudice to the validity of anything previously done thereunder.

PART IV

THE CIVIL SERVICES IN INDIA

The Civil Services in India

Tenure of civil servants

36. (1) Subject to the provisions of the Principal Act and of rules made thereunder, every person in the civil service of the Crown in India holds office during His Majesty's pleasure, and may be employed in any manner required by a proper authority within the scope of his duty, but no person in that service may be dismissed by any authority subordinate to that by which he was appointed, and the Secretary of State in Council may (except so far as he may provide by rules to the contrary) reinstate any person in that service who has been dismissed.

If any such person appointed by the Secretary of State in Council thinks himself wronged by an order of an official superior in a Governor's province, and on due application made to that superior does not receive the redress to which he may consider himself entitled, he may, without prejudice to any other right of redress, complain to the Governor of the province in order to obtain justice, and the Governor is hereby directed to examine such complaint and require such action to be taken thereon as may appear to him to be just and equitable.

**Right of
appeal to
Governor**

(2) The Secretary of State in Council may make rules for regulating the classification of the civil services in India, the methods of their recruitment, their conditions of service, pay and allowances, and discipline and conduct. Such rules may, to such extent and in respect of such matters as may be prescribed, delegate the power of making rules to the Governor-General in Council or to Local Governments, or authorize the Indian Legislature or local legislatures to make laws regulating the public services:

**Secretary of
State's
control
over Civil
Services**

Provided that every person appointed before the commencement of this Act by the Secretary of State in Council to the civil service of the Crown in India shall retain all his existing or accruing rights, or shall receive such compensation for the loss of any of them as the Secretary of State in Council may consider just and equitable.

**'Existing or
accruing',
rights of
civil
servants
guaranteed**

(3) The right to pensions and the scales and conditions of pensions of all persons in the civil service of the Crown in India appointed by the Secretary of State in Council shall be regulated in accordance with the rules in force at the time of the passing of this Act. Any such rules may be varied or added to by the Secretary of State in Council and shall have effect as so varied or added to, but any variation or addition shall not adversely affect the pension of any member of the service appointed before the date thereof.

**Pension of
civil
servants**

Nothing in this section or in any rule thereunder shall prejudice the rights to which any person may, or may have, become entitled under the provisions in relation to pensions contained in the East India Annuity Funds Act, 1874.

(4) For the removal of doubts, it is hereby declared that all rules or other provisions in operation at the time of the passing of this Act, whether made by the Secretary of State in Council or by any other authority, relating to the civil service of the Crown in India, were duly made in accordance with the powers in that behalf, and are confirmed, but any such rules or provisions may be revoked, varied or added to by rules or laws made under this section.

PART V

STATUTORY COMMISSION

Appoint- ment of Commission

41. (1) At the expiration of ten years after the passing of this Act the Secretary of State, with the concurrence of both Houses of Parliament, shall submit for the approval of His Majesty the names of persons to act as a commission for the purposes of this section.

Work to be done by the Commission

(2) The persons whose names are so submitted, if approved by His Majesty, shall be a commission for the purpose of inquiring into the working of the system of government, the growth of education, and the development of representative institutions in British India, and matters connected therewith, and the commission shall report as to whether and to what extent it is desirable to establish the principle of responsible government, or to extend, modify, or restrict the degree of responsible government then existing therein, including the question whether the establishment of second chambers of the local Legislatures is or is not desirable.

(3) The commission shall also inquire into and report on any other matter affecting British India and the provinces, which may be referred to the commission by His Majesty.

9. SIMON COMMISSION ON CENTRAL AND PROVINCIAL SUBJECTS UNDER ACT OF 1919.

141. What the Reforms effected in delimiting a provincial field (as in much else) cannot be discovered by reading the Act of 1919 alone. Devolution to the provinces was carried out by rules made under the Act and approved by both Houses of Parliament. These rules are known as the Devolution Rules. . . . it is far more important. . . . to appreciate the effect of these statutory rules than to search for a picture of the present constitution in the Act itself. . . . the provincial devolution thus effected, whether in the legislative, the administrative, or the financial sphere, takes place only with reference to the nine major provinces, called in the Act the "Governors' Provinces". The rest of British India, so far as the devolution of authority from the centre is concerned, remains essentially in the same position as before the passing of the Act of 1919. . . . Here we are concerned only with the nine provinces of Madras, Bombay, Bengal, and United Provinces, the Punjab, Bihar and Orissa, the Central Provinces, Assam and Burma. In the case of each of these, the demarcation between the central and the provincial field is identical; in the subdivision of provincial subjects between "reserved" and "transferred". . . ., there are a few variations between province and province.

Devolution Rules

Provincial devolution applies only to 9 major Provinces.

142. In respect of these nine provinces, the method followed is to classify subjects, for the purpose of distinguishing the functions of provincial Governments and Legislatures from the functions of the Central Government and Legislature, by dividing them into "Central Subjects" and "Provincial Subjects". We reproduce. . . the Schedule to Rule 3 of the Devolution Rules, which contains this distribution. In all such distributions the question arises as to the side of the line on which subjects which happen to be omitted are to fall: in the case of India, the answer is given by the last item in the list of central subjects. Any matter not included

"Central subjects" and "Provincial subjects"

Residuary subjects

**No appeal
to courts**

**Principle of
classification**

among provincial subjects is central; the undistributed residue thus follows the Canadian, and not the Australian, model. If any doubt arises as to whether a particular matter does or does not relate to a provincial subject, the Governor-General in Council finally decides the question; there is no room for appeal to the law courts in such a case. The principle of discrimination between central and provincial subjects is that, where extra-provincial interests predominate, the subject is treated as central, while on the other hand all subjects in which the interests of a particular province essentially predominate are provincial. . . .

**Power of
Central
Legislature
to legislate
on Provin-
cial subjects**

**Power of
Governor-
General**

143. The subjects earmarked as provincial may be regarded as so classified both for purposes of administration and for purposes of legislation. But, although topics are thus distributed, the Central Legislature remains theoretically entitled to legislate over the whole field and no challenge can arise as to whether a given piece of legislation has been carried out by the right legislature. For, by Section 84(2) of the Government of India Act "the validity of any Act of the Indian legislature or any local legislature shall not be open to question in any legal proceedings on the ground that the Act affects a provincial subject, or a central subject, as the case may be." There are a number of subjects about which a provincial Council may not legislate without the previous sanction of the Governor-General [Section 80A(3)], but here again the way is blocked to prevent any Court or Judge deciding that the provincial law is invalid because the previous sanction of the Governor-General has not been obtained—for his subsequent assent (which is in any case necessary to make a provincial Act valid) cures the defect. Conversely, the previous sanction of the Governor-General is required before the Central Legislature can trench upon the field which is *prima facie* provincial [Section 67(2) (i) and (ii)]. Thus the Indian constitution has adopted an ingenious method of securing in practice a distribution of topics between

the Central Legislature and provincial legislatures while avoiding the danger of technical objections being raised and litigation promoted on the plea that the wrong legislature has passed the Act and that, therefore, it is a nullity.

144. Besides marking out for the provinces a legislative and administrative sphere, the reformed constitution effected a delimitation of sources of revenue for purposes of provincial finance. It was a prime object to do so. "Our first aim", ran the Report, "has been to find some means of entirely separating the resources of the central and provincial Governments".¹ Again, this purpose is carried out by Rules, which allocate certain classes of revenue, such as land revenue and excise on alcoholic liquor, to provincial Governments, while customs and income tax, for example, remain sources of central revenue.

**Allocation
of financial
sources**

DEVOLUTION RULES. SCHEDULE I.

Part I—Central Subjects

1. (a) Defence of India and all matters connected with His Majesty's Naval, Military, and Air Forces in India, or with His Majesty's Marine Service or with any other force raised in India, other than military and armed police wholly maintained by local Governments.

(b) Naval and military works and cantonments.

2. External relations, including naturalisation and aliens, and pilgrimages beyond India.

3. Relations with States in India.

4. Political charges.

5. Communications to the extent described under the following heads:—

(a) Railways and extra-municipal tramways, in so far as they are not classified as provincial subjects under entry 6(d) of Part II of this Schedule;

(b) aircraft and all matters connected therewith; and

¹ *Montagu-Chelmsford Report*, para 200.

(c) inland waterways, to an extent to be declared by rule made by the Governor-General in Council or by or under legislation by the Indian legislature.

6. Shipping and navigation, including shipping and navigation on inland waterways in so far as declared to be a central subject in accordance with entry 5(c).

7. Lighthouses (including their approaches), beacons, lightships, and buoys.

8. Port quarantine and marine hospitals.

9. Ports declared to be major ports by rule made by the Governor-General in Council or by or under legislation by the Indian legislature.

10. Posts, telegraphs and telephones, including wireless installations.

11. Customs, cotton excise duties, income tax, salt, and other sources of all-India revenues.

12. Currency and coinage.

13. Public debt of India.

14. Savings Banks.

15. The Indian Audit Department as defined in the rules framed under section 96D(1) of the Act.

16. Civil law, including laws regarding status, property, civil rights and liabilities, and civil procedure.

17. Commerce, including Banking and Insurance.

18. Trading companies and other associations.

19. Control of production, supply and distribution of any articles in respect of which control by a central authority is declared by rule made by the Governor-General in Council or by or under legislation by the Indian legislature to be essential in the public interest, save to the extent to which in such rule or legislation such control is directed to be exercised by a local Government.

20. Development of industries, in cases where such development by central authority is declared by order of the Governor-General in Council, made after consultation with the local Government or local Governments concerned, expedient in the public interest.

21. Control of cultivation and manufacture of opium, and sale of opium for export.
22. Stores and stationery, both imported and indigenous, required for Imperial Departments.
23. Control of petroleum and explosives.
24. Geological survey.
25. Control of mineral development, in so far as such control is reserved to the Governor-General in Council under rules made or sanctioned by the Secretary of State, and regulation of mines.
26. Botanical Survey.
27. Inventions and designs.
28. Copyright.
29. Emigration from, and immigration into, British India, and inter-provincial migration.
30. Criminal Law, including criminal procedure.
31. Central police organisation.
32. Control of arms and ammunition.
33. Central agencies and institutions for research (including observatories), and for professional or technical training or promotion of special studies.
34. Ecclesiastical administration, including European cemeteries.
35. Survey of India.
36. Archaeology.
37. Zoological survey.
38. Meteorology.
39. Census and statistics.
40. All-India services.
41. Legislation in regard to any provincial subject, in so far as such subject is in Part II of this Schedule stated to be subject to legislation by the Indian legislature, and any powers relating to such subject reserved by legislation to the Governor-General in Council.
42. Territorial changes, other than intra-provincial, and declaration of laws in connection therewith.
43. Regulation of ceremonial, titles, orders, precedence and civil uniform.
44. Immovable property in the possession of the Governor-General in Council.

45. The Public Service Commission.

46. All matters expressly excepted by the provisions of Part II of this Schedule, from inclusion among provincial subjects.

47. All other matters not included among provincial subjects under Part II of this Schedule.

Part II—Provincial Subjects

[Some of these provincial subjects are "transferred", the rest are "reserved". The transferred Provincial subjects are set out in Schedule II to Rule 6 of the Devolution Rules. This Schedule is not given separately here, but the transferred subjects are those marked with an asterisk. Except where otherwise indicated in the footnotes, subjects so marked are transferred in all Governors' provinces.]

* 1. Local self-government, that is to say, matters relating to the constitution and powers of municipal corporations, improvement trusts, district boards, mining boards of health, and other local authorities established in a province for the purpose of local self-government, exclusive of matters arising under the Cantonments Act, 1910; subject to legislation by the Indian legislature as regards:—

(a) the powers of such authorities to borrow otherwise than from a provincial Government, and

(b) the levying by such authorities of taxation not included in Schedule II to the Scheduled Taxes Rules.

*2. Medical administration, including hospitals, dispensaries and asylums, and provision for medical education.

*3. Public health and sanitation and vital statistics; subject to legislation by the Indian legislature in respect to infectious and contagious diseases to such extent as may be declared by any Act of the Indian legislature.

*4. Pilgrimages within British India.

***5. Education¹; provided that—**

(a) the following subjects shall be excluded, namely:—

(i) the Benares Hindu University, the Aligarh Muslim University and such other Universities constituted after the commencement of these rules as may be declared by the Governor-General in Council to be central subjects; and

(ii) Chiefs' colleges and any institutions maintained by the Governor-General in Council for the benefit of members of His Majesty's Forces or of other public servants or of the children of such members or servants; and

(b) the following subjects shall be subject to legislation by the Indian Legislature, namely:—

the definition of the jurisdiction of any University outside the province in which it is situated.

***6. Public works² other than those falling under entry 14 of this Part and included under the following heads, namely:—**

(a) Construction and maintenance of provincial buildings used or intended for any purpose in connection with the administration of the province and care of historical monuments, with the exception of ancient monuments as defined in Section 2(1) of the Ancient Monuments Preservation Act, 1904, which are for the time being declared to be protected monuments under Section 3(1) of that Act; provided that the Governor-General in Council may, by notification in the "Gazette of India", remove any such monument from the operation of this exception, either absolutely or subject to such conditions as he may, after consultation with the local Government or local Governments concerned, prescribe;

1 European and Anglo-Indian Education is transferred only in Burma.

2 Transferred in all Governors' provinces except Assam, with the exception that the construction and maintenance of residences of Governors are everywhere reserved.

(b) Roads, bridges, ferries, tunnels, ropeways, causeways, and other means of communication, subject to the provision of rule 12A, of these Rules, and of any orders made thereunder;

(c) tramways within municipal areas; and

(d) light and feeder railways and extra-municipal tramways, in so far as provision for their construction and management is made by provincial legislation; subject to legislation by the Indian legislature in the case of any such railway or tramway which is in physical connection with the main line or is built on the same gauge as an adjacent main line.

7. Water supplies, irrigation and canals, drainage and embankments, water storage and water power; subject to legislation by the Indian legislature with regard to matters of inter-provincial concern or affecting the relations of a province with any other territory.

8. Land revenue administration as described under the following heads, namely:—

(a) assessment and collection of land revenue;

(b) maintenance of land records, survey for revenue purposes, records-of-rights;

(c) laws regarding land tenures, relations of landlords and tenants, collection of rents;

(d) Courts of Wards, incumbered and attached estates;

(e) land improvement and agricultural loans;

(f) colonization and disposal (subject to any provisions or restrictions that may be prescribed by the Secretary of State in Council under Section 30 of the Act) of Crown lands not in the possession of the Governor-General in Council, and alienation of land revenue; and

(g) management of Government estates.

9. Famine relief.

*10. Agriculture, including research institutes, experimental and demonstration farms, introduction of improved methods, provision for agricultural education, protection against destructive insects and

pests, and prevention of plant diseases; subject to legislation by the Indian Legislature in respect to destructive insects and pests and plant diseases to such extent as may be declared by any Act of the Indian Legislature.

*11. Civil Veterinary Department, including provision for veterinary training, improvement of stock, and prevention of animal diseases; subject to Legislation by the Indian Legislature in respect to animal diseases to such extent as may be declared by any Act of the Indian Legislature.

*12. Fisheries.

*13. Co-operative Societies.

*14. Forests,¹ including preservation of game therein and all buildings and works executed by the Forest Department; subject to legislation by the Indian Legislature as regards disforestation of reserved forests.

15. Land acquisition; subject to legislation by the Indian Legislature.

*16. Excise, that is to say, the control of production, manufacture, possession, transport, purchase and sale of alcoholic liquor and intoxicating drugs, and the levying of excise duties and licence fees on or in relation to such articles, but excluding, in the case of opium, control of cultivation, manufacture and sale for export.

17. Administration of justice, including constitution, powers, maintenance, and organisation of courts of civil and criminal jurisdiction within the province; subject to legislation by the Indian Legislature as regards High Courts, Chief Courts, and Courts of Judicial Commissioners, and any courts of criminal jurisdiction.

18. Provincial law reports.

19. Administrators-General and Official Trustees; subject to legislation by the Indian Legislature.

20. Non-judicial stamps, subject to legislation by the Indian Legislature, and judicial stamps, sub-

¹ Transferred in Bombay and Burma only.

ject to legislation by the Indian Legislature, as regards amount of court fees levied in relation to suits and proceedings in the High Courts under their original jurisdiction.

*21. Registration of deeds and documents; subject to legislation by the Indian Legislature.

*22. Registration of births, deaths and marriages; subject to legislation by the Indian Legislature for such classes as the Indian Legislature may determine.

*23. Religious and charitable endowments.

24. Development of mineral resources, which are Government property, subject to rules made or sanctioned by the Secretary of State, but not including the regulation of mines.

24A. Control of production, supply and distribution of any articles to the extent to which by rule made by the Governor-General in Council or by or under legislation by the Indian Legislature such control is directed to be exercised by a Local Government.

*25. Development of industries, including industrial research and technical education.

26. Industrial matters included under the following heads, namely:—

(a) factories;

(b) settlement of labour disputes;

(c) electricity;

(d) boilers;

(e) gas;

(f) smoke nuisances; and

(g) welfare of labour, including provident funds, industrial insurance (general, health and accident), and housing; Subject as to heads (a), (b), (c), (d) and (g) to legislation by the Indian Legislature.

*27. Stores and stationery¹, subject, in the case of imported stores and stationary, to such rules as may be prescribed by the Secretary of State in Council.

¹ Only Stores and Stationery required for transferred departments are transferred.

*28. Adulteration of foodstuffs and other articles; subject to legislation by the Indian Legislature as regards import and export trade.

*29. Weights and measures; subject to legislation by the Indian Legislature as regards standards.

30. Ports, except such ports as may be declared by rules made by the Governor-General in Council or by or under Indian legislation to be major ports.

31. Inland waterways, including shipping and navigation thereon so far not declared by the Governor-General in Council to be Central subjects, but subject as regards inland steam vessels to legislation by the Indian Legislature.

32. Police, including railway police; subject in case of railway police, to such conditions as regards limits of jurisdiction and railway contributions to cost of maintenance as the Governor-General in Council may determine.

33. The following miscellaneous matters, namely:—

*(a) regulation of betting and gambling¹;

*(b) prevention of cruelty to animals¹;

*(c) protection of wild birds and animals¹;

(d) control of poisons, subject to legislation by the Indian Legislature;

(e) control of vehicles, subject, in the case of motor vehicles, to legislation by the Indian Legislature as regards licenses valid throughout British India; and

*(f) control of dramatic performances and cinematographs¹, subject to legislation by the Indian Legislature in regard to sanction of films for exhibition.

34. Control of newspapers, books and printing presses; subject to legislation by the Indian Legislature.

35. Coroners.

36. Excluded areas.

¹ Transferred in Burma only.

37. Criminal tribes; subject to legislation by the Indian Legislature.

38. European vagrancy; subject to legislation by the Indian Legislature.

39. Prisons, prisoners (except persons detained under the Bengal State Prisoners Regulation, 1818, the Madras State Prisoners Regulation, 1819, or the Bombay Regulation, XXV of 1827) and reformatories; subject to legislation by the Indian Legislature.

*40. Pounds and prevention of cattle trespass.

41. Treasure trove.

*42. Libraries (except the Imperial Library) and museums (except the Indian Museum, the Imperial War Museum, the Victoria Memorial, Calcutta) and Zoological Gardens.

43. Provincial Government Presses.

44. Elections for Indian and Provincial Legislatures; subject to rules framed under Sections 64(1) and 72A(4) of the Act.

45. Regulation of medical and other professional qualifications and standards; subject to legislation by the Indian Legislature.

46. Local Fund Audit, that is to say, the audit by Government agency of income and expenditure controlled by local bodies.

47. Control. . . . of members of all-India and provincial services serving within the province; and control, subject to legislation by the Indian Legislature, of public services within the province other than all-India services.

48. Sources of provincial revenue, not included under previous heads, whether

(a) taxes included in the Schedules to the Scheduled Taxes Rules; or

(b) taxes not included in those Schedules, which are imposed by or under provincial legislation which has received the previous sanction of the Governor-General.

49. Borrowing of money on the sole credit of the province; subject to the provisions of the Local Government. (Borrowing) Rules.

50. Imposition by legislation of punishment by fines, penalty, or imprisonment for enforcing any law of the province relating to any provincial subject; subject to legislation by the Indian Legislature in the case of any subject in respect of which such a limitation is imposed under these rules.

51. Any matter which, though falling within a central subject, is declared by the Governor-General in Council to be of a merely local or private nature within the province.

10. MR. MONTAGU ON THE GOVERNMENT OF INDIA BILL, 1919.

(Speech in the House of Commons, June 5, 1919.)

... I would. . . . remind the House that deliberately, of intention, in accordance with the terms of the pronouncement of the 20th August, this Bill does not pretend to give to India a Constitution that will endure. It is transitional; it is a bridge between government by Parliament and government by the representatives of the peoples of India. . . .

**'Transi-
tional' con-
stitution**

* * * * *

... There are the proposals for devolution, the proposals for decentralization. I have heard no critic in these two years who has not told me that it is absolutely essential to get greater freedom for the Government of India from the India Office. I have hardly met a critic who has not told me that it is absolutely essential for the Local Governments to get more freedom from the Government of India. . . . I do not think that anybody questions that, from the point of view of administrative convenience, if on no higher grounds, government by dispatch, with all its cumbrous machinery, all its necessarily delaying methods, all the difficulties attending upon considering and reconsidering plans and projects over thou-

**Necessity of
'decentrali-
sation'**

Connection
between
'decentra-
lisation' and
popular
control

sands of miles of land and thousands of miles of sea, all that ought to be got rid of. . . . The only possible substitute for government by dispatch is government by vote. The only possible way of really achieving devolution and making the unit. . . . responsible for the management of its own affairs, is to make the Government of that unit responsible to the representatives of the people. If you simply say, 'Let us have an irresponsible Government in a province, and let the Government of India not interfere, and the Secretary of State not interfere,' you have a policy which is merely the enthronement of bureaucracy and the very negation of the progressive realization of responsible government.

Why
Province
chosen as
unit in
scheme of
'decentra-
lisation'

. . . . In order to realize responsible government, and in order to get devolution. . . . you have to choose your unit of government, and you have got in that unit to create an electorate which will control the Government. . . . It is in the province that you must look for your unit, because it is in the provinces that the great educational results of Lord Morley's Reform Bill have been achieved. He made the Legislative Councils representative to some extent of the people, with a very small electorate and practically no powers beyond powers of criticism. But it is the existence of those Councils which has awakened the appetite for self-government, and has added to the appreciation of self-government in India, and it is therefore, to my mind, absolutely inevitable that we should proceed to devote ourselves to taking the Morley-Minto Councils a stage farther in their development. Therefore it is to the provinces that we go, and the provinces are beginning to be the units of local patriotism in India. . . .

Develop-
ment of
Morley-
Minto
Councils
to be
continued

Difficulties
in the way
of 'progressive
realisation
of
responsible
government'

. . . If I have carried the House with me in the suggestion that the province is the unit in which we shall start a progressive realization of responsible government, what are the difficulties that we have to face? The difficulties are these. . . . You have a small fraction of the population highly educated and a large proportion of the population not educated at all. You

have, secondly, great differences of race and religion and great difficulties arising out of the harsh customs and precepts of caste. I cannot help believing that there is no better way of getting over these difficulties than by representative institutions. There is no greater stimulus to education, there is no better way of promoting community of action or of overcoming the acerbities of caste than by setting to the population a common task to do together, to work out the prosperity of their country. . . .

Difficulties may be removed by representative institutions.

Despite all these difficulties, I therefore say the essence of the problem is to train the electors. . . . proposals have been made to put 5,000,000 voters on the register. But you do not form an electorate by that mere process. You have to get them to vote and you have to get them to understand what a vote means. You have to get them to appreciate the results of a vote. There is only one way of doing that, and that is to make the vote of some value. . . . Therefore it is a necessary step for the training of an electorate that you must give it power through its representatives. . . . You have to give the electorate which you create men responsible to it to carry out its demands.

Electors cannot be trained without giving them power.

If I have carried the House thus far, the next step must be that you have to choose a part of the provincial functions which at the outset you will entrust to the representatives of the people. Anyone who has followed me in what I have said* about education, about caste, and about religious differences, will realize that it is not right to entrust them with everything at the same moment. There are some things, such as the maintenance of peace and order. . . . things in which mistakes are irretrievable, things in which the electorate at the outset should not be able to enforce its demands, things like Land Revenue, which you should keep from the control of the representatives of the people. . . .

Certain functions of Provincial Government cannot be put under popular control.

. . . . the only way to achieve our purpose was to reserve for the present and for the present only,

Certain functions of Provincial Government may be transferred to popular control.

certain functions of government under the control of the agents of this House, and to transfer other functions to the representatives of the people. . . .the next question to be decided is, what is the form of ministry that you will set up to conduct them? Is it to be one or is it to be two? . . .if reserved subjects are to become transferred subjects one day, it is absolutely essential that, during the transitional period, although there is no direct responsibility for them, there should be opportunities of influence and consultation. Therefore, although it seems necessary to separate the responsibility, there ought to be every room that you can possibly have for consultation and joint deliberation on the same policy, and for acting together for the purposes of consultation and deliberation, as the Bill provides, in one Government.

Composition of Provincial Executive

Review of progress at stated periods

. . . .This procedure would be absolutely indefensible if it were not for the fact that it was transitional, and if it were not for the fact that at stated periods it is proposed to hold a Parliamentary enquiry into its working, with a view to further stages. By that means there is a certain method of progress. By that means everything that happens will come under review, and the attitude adopted by each part of the Government to the affairs of the other part will be one of the prime factors in the decision of the Commission that reviews.

Responsible Government at the Centre not possible

. . . .I do not think the time has yet come for a similar movement in the Government of India. I think there we must take the step of one stage only, namely, to make the Legislative Assembly more representative, to give it greater power of influencing and criticizing, but not, at this moment, of responsibility. . . .In so far as the Provincial Government has got to defer to its legislature by statute, that is to say in transferred subjects, you have a Government which is responsible to the electorate. Therefore there is no necessity to control it by the Government of India and you get the devolution which the men who want to perfect administration desire.

Therefore the Government of India will not be concerned, generally speaking, with transferred subjects, and the Secretary of State will not be concerned with transferred subjects. Therefore, this House will not be concerned with transferred subjects. Therefore, so far as transferred subjects are concerned, we shall have parted with our trusteeship and surrendered it to the representatives of the peoples of India.

In Provinces 'transferred subjects' should be freed from control of Government of India, Secretary of State and Parliament.

* * * * *

I implore this House to show to India to-day that Parliament is receptive of the case for self-government and only seeks an opportunity of completing it by the demonstrable realization of the success of its stages. . . . 'The future and the date upon which you realize the future goal of self-government are with you, you are being given great responsibility to-day, and the opportunities of consultation and influence on other matters in which for the present we keep responsibility. You will find in Parliament every desire to help and to complete the task which this Bill attempts, if you devote yourselves to use with wisdom, with self-restraint, with respect for minorities, the great opportunities with which Parliament is entrusting you'. That is the message which. . . . this House should send to the Indian peoples to-day. . . . That message cannot be sent unless the House is determined to pass. a statute which means the beginning of self-government, responsible government, in the Indian Empire.

Message to India

'Beginning of self-government, responsible government, in India'

11. THE CREWE COMMITTEE¹ ON THE 'HOME' ADMINISTRATION OF INDIAN AFFAIRS, 1919.

1. The Committee was appointed to enquire into the organisation of the India Office and the relations between the Secretary of State in Council and the Government of India. We were directed to have

Task of the Committee

¹ The Committee consisted of the Marquess of Crewe, Lord Inchcape, H. H. Aga Khan, Lord Esher, Mr. G. P. Collins, Mr. G. E. Murray and Mr. Ormsby-Gore. Lord Inchcape was prevented by illness from joining the Committee.

regard generally to the proposals made in the Report on Indian Constitutional Reforms for the reform of the Government of India and provincial Governments, and in particular to the recommendations contained in paragraphs 290 to 295 of the Report.

**Historical
background
of Indian
constitution**

**System
at work
in 1858**

8. There is much in the existing system which has its origin in arrangements suited to the control by the East India Company of its commercial operations in a distant land. These operations led to the exercise by the Company of governmental powers, in regard to which Parliament from an early date asserted its supremacy. The inter-action of the two forces had by 1858 produced a constitution which may shortly be described as follows:—The executive management of the Company's affairs was in the hands of a Court of Directors, who were placed in direct and permanent subordination to a body representing the British Government and known as the Board of Control. The functions of the Board were in practice exercised by the President, who occupied in the Government a position corresponding to some extent to that of a modern Secretary of State for India. The Board of Control were empowered "to superintend, direct and control all acts, operations, and concerns which in anywise relate to the civil or military government or revenues of the British territorial possessions in the East Indies" (24 Geo. III., sess. 2, c. 25). Subject to the superintendence of the Board of Control, the Directors conducted the correspondence with the Company's officers in India, and exercised the rights of patronage in regard to appointments.

**Transfer of
government
to the
Crown**

9. The transference of the administration of India to the Crown in 1858 was effected by the Act for the Better Government of India (21 & 22 Vict., c. 106), which has regulated the Home administration of India since that year, and of which the main provisions were re-enacted in the consolidated Government of India Act, 1915-16. In general, the dual

functions of the Board of Control and the Court of Directors were vested in the corporate body known as the Secretary of State for India in Council. The substitution of administrative responsibility on the part of the Government for the superintendence it had formerly exercised caused a redistribution of functions in which the lines of inheritance became to some extent obscured; but the persistence of the dual principle can still be traced in the corporate activities of the Secretary of State in Council.

Continuation of 'dual principle'

10. "The Secretary of State has and performs all such or the other like powers and duties relating to the government or revenues of India, and has all such or the like powers over all officers appointed or continued under this Act, as, if the Government of India Act, 1858, had not been passed, might or should have been exercised or performed by the East India Company, or by the Court of Directors. . . . either alone or by the direction or with the sanction or approbation of the Commissioners for the Affairs of India" (i.e., the Board of Control) "in relation to that government or those revenues and the officers and servants of that Company, and also all such powers as might have been exercised by the said Commissioners alone." [*Government of India Act, 1915-16, section 2(1).*]

Functions of Secretary of State

11. The functions assigned to the Council of India were in some respects derived from the position previously held by the Court of Directors. Under the direction of the Secretary of State, and subject to the provisions of the Act, they "conduct the business transacted in the United Kingdom in relation to the government of India and the correspondence with India." But at the same time they were given a special function, which was presumably intended to act as a counterpoise to the centralisation of powers in the hands of the Secretary of State. In regard to certain decisions, and notably in regard to "the grant or appropriation of any part of" the revenues of India, the concurrence of a majority of votes at a meeting of the Council of India is

Functions of Council of India

Council of India as a 'counterpoise to the centralisation of powers in the hands of the Secretary of State'

**Secretary
of State
empowered
to overrule
Council**

required. This provision, usually referred to as the financial veto, has, not without reason, been regarded as the symbol of the special status assigned to the Council in its relationship with the Secretary of State. It is emphasised, though in a lesser degree, by the enactment that in all other matters, with two exceptions, the Secretary of State must consult his Council either at a weekly meeting or by the formal procedure of depositing his proposed orders on the Table of the Council Room for seven days prior to their issue, though he is empowered to overrule the Council's recommendations. The two exceptions are, first, that in cases of urgency he may issue orders without previously consulting the Council, provided that he subsequently communicated to the members his reasons for his action; and secondly, that "where an order or communication concerns the levying of war, or the making of peace, or the public safety, or the defence of the realm, or the treating or negotiating with any prince or state, or the policy to be observed with respect to any prince or state, and a majority of votes therefore at a meeting of the Council of India is not required," the Secretary of State may act on his own initiative without reference to the Council, if he considers that the matter is of a nature to require secrecy. Our description of the statutory functions of the Secretary of State and the Council of India is designedly brief, because we feel that the enumeration of legal powers and safeguards can only create a very inadequate impression of the actual principles which have been evolved in the working of the system. There are some elements which, as we have tried to show, have been derived from the days of a chartered Company yielding more and more to Parliamentary control, and others which were grafted on to the structure at the time when Parliament assumed complete responsibility through its Ministerial representative; but the whole organism has been moulded by the instinctive process of adaptation to a form which does not lend itself easily to definition in set constitutional terms. We are content for our purposes to envisage the system in

**Relations
between
Secretary
of State and
Council
'moulded
by the
instinctive
process of
adaptation'**

its present working and in its reaction to the new conditions of Indian administration.

12. The new Council consists of from ten to fourteen members, each appointed for seven years, of whom nine at least must have served or resided in British India for ten years and must not have left India more than five years previously to their appointment. It is in the main a body differing in status but not in nature from the authorities in India whose activities come under its review. The Secretary of State in Council represents in fact that supreme element of expert control at the higher end of the chain of official administration. In corporate capacity he has delegated wide powers to the Indian administrations without divesting himself of his ultimate responsibilities as the governing authority. The main provisions of the Act of 1858, as we understand them, had the effect of giving prominence to these official duties of the corporation it established. But the Secretary of State, as distinct from the Secretary of State in Council, is generally responsible as a Minister for the co-ordination of Indian and Imperial policy. The Council are by law in a position to obstruct his policy, or indeed the policy of His Majesty's Government, by interposing their financial veto if Indian revenues are affected; but in practice they have acknowledged the supremacy of the Imperial Executive by accepting proposals communicated to them as decisions of the Ministry, in so far as those proposals raise issues on which they are legally competent to decide. We mention this demarcation of functions, to which we shall revert, to illustrate the way in which the hard outlines of legal definition have been rounded off by constitutional usage. But we are immediately concerned at present with the collective functions of the Secretary of State in Council in their relation to the Government of India. And in that relation the governing body was designed to assert an active supremacy. All measures, administrative, financial and legislative, of the authorities in India are referred to it for

Composition
of Council
of India

'Expert
Control'

Secretary
of State as
'Minister
for the co-
ordination
of Indian
and Imperial
policy'

Council of
India
subject
to 'the
supremacy
of the
Imperial
Executive'

'Legal
definition'
modified
by 'con-
stitutional
usage'

**'Active
supremacy'
of Secretary
of State
in Council
over
Government
of India**

examination and decision, except in so far as by general or special orders it has delegated powers of sanction. Delegation has been carried out largely as a matter of expediency, with the direct object of increasing administrative efficiency; it has not implied, and has not been intended to imply, any radical change in the respective functions of the authorities between whom it has taken place. The Secretary of State in Council retains the ultimate authority as the head of the system; and we have now to see how far the conception of graduated official control—tempered, it may be, at various stages by the advice of representatives of the people—can be adapted to the principle of popular responsibility which is to be introduced.

**How can
this 'active
supremacy'
be adapted
to popular
respon-
sibility?**

**Principal
features of
Mont-Ford
Reforms**

13. The features which typify the Reforms Scheme are the transfer of some subjects of administration from officers of the Crown to representatives of the people in the provinces, and the encouragement in the Indian legislature of an authoritative expression of popular opinion to which the Governments will become increasingly responsive. Simultaneously with these developments a systematic delegation of powers, which, indeed, has long been felt to be desirable in the interests of efficiency, is contemplated in order that the free influence of the new forces may not be blocked at the outset by some survival of the system they are intended eventually to supplant. Leaving on one side for the present the provincial aspects, we proceed to discuss the effects of the scheme on the Government of India, where, it will be remembered, there is no transfer of subjects but a marked enlargement of popular representation. The new constitution of the Indian Legislative Assembly, which will give to the non-official members a substantial majority, is bound to make its weight felt with the Government of India. The problem with which we are immediately concerned is to secure that the opinion of the Assembly should carry corresponding weight with the authorities in whom is vested the power of controlling the Government of India. It

**How can
Government
of India
reconcile
'active
supremacy'
of Whitehall
with
increasing
influence
of Indian
Legislative
Assembly?**

appears to us that the conception of the Reforms Scheme leads naturally to the acceptance of the principle, which we here state in general terms, that where the Government of India find themselves in agreement with a conclusion of the Legislative Assembly, their joint decision should ordinarily prevail. We set out below what we conceive to be the application of the principle to the main divisions of governmental functions.

14. First as regards legislation. At the outset, we think it desirable to secure that the authority of the Legislative Assembly will not be restricted by Government intervention through the Council of State save on the direct instructions of the Secretary of State. . . . We note that the words employed in clause 20(4) of the Government of India Bill, regarding certification by the Governor-General in Council, are "the safety, tranquillity, or interests of British India or any part thereof", which appear to be of somewhat wider import than those in the Joint Report.

15. In normal cases, where legislation comes before the Secretary of State, it must already have received the assent of the Governor-General, and must have been passed by a majority of votes in the Council of State and in the Legislative Assembly. But inasmuch as there is a substantial official vote in the latter body and normally an official majority in the former, it follows that the measure has not necessarily the support of a majority of the non-official members in either chamber. In order, therefore, to give proper emphasis to the legislative authority of the Assembly, we recommend that whenever legislation has the support of a majority of the non-official members of the Legislative Assembly, assent should be refused only in cases in which the Secretary of State feels that his responsibility to Parliament for the peace, order and good government of India, or paramount considerations of Imperial policy, require him to secure reconsideration of the matter at issue by the Legislative Assembly.

(i) Legislation

When should Secretary of State refuse assent to legislation ?

(ii) Budget
and general
administra-
tion

16. In examination of the Budget, and in criticism of general administration, the Legislative Assembly can express its views only by means of resolutions; and these will continue to be advisory in character, without legal sanction. The Government may accept a resolution either because they agree with it from the outset, or because they decide to defer to the opinion of the Assembly. Where for any reason reference to the Secretary of State is considered necessary, we recommend that a joint decision of the Government of India and a majority of the non-official members of the Assembly, reached by discussion of a resolution, should be given the same degree of authority as similar decisions on legislative proposals, and that the principle we have stated in paragraph 15 should be applied in these cases also.

'Delegation
of powers
by
Secretary
of State

Practice of
'previous
consulta-
tion'
on legisla-
tive and
financial
questions

17. We now revert to the question of delegation, considered as a supplementary aspect of the scheme of Reform. We are in full sympathy with the opinion expressed by the authors of the Joint Report, that previous sanction to decisions taken in India should be required in fewer cases than in the past, and that in some matters it will suffice in future if the Secretary of State asserts his control by means of a veto if necessary. Delegation of powers is so much a matter of technical detail that we consider our function to be confined to the duty of laying down guiding principles for its regulation. The basis of delegation that we recommend is as follows: that without prejudice to the further relaxation of control by the Secretary of State, the principle of previous consultation between the Secretary of State and the Government of India should be substituted in all cases where the previous sanction of the Secretary of State in Council has hitherto been required; but the Secretary of State should from time to time revise the list of subjects on which he requires such previous consultation, and inform the Government of India accordingly. Our recommendations would apply to all projects, both legislative and financial, subject to the reservations that may be

necessary for the proper discharge of the Secretary of State's Ministerial responsibilities. In regard to administrative questions, as distinct from those involving legislation or finance, the special need for delegation in the sense applied above does not arise. The administrative powers of the Government of India in this respect are not limited by any formal restrictions; but as a matter of constitutional practice, reference to the Home authorities is of course made on what are understood to be specially important administrative matters. It is clear that practice should be continued under the new system. We think it unnecessary to say more on this head than that the degree of discretion allowed in matters of pure administration should be enhanced in general correspondence with the wider authority to be allowed in future in matters of legislation and finance. As regards the general principle we have suggested, we assume that consultation would be real and effective in the sense that the Secretary of State would receive ample notice of the Government of India's proposals and that a full understanding between London and Delhi would be reached by a free interchange of views.

... in so far as provincial action comes under the cognisance of the Secretary of State, either directly or through the Government of India, he should regulate his intervention with regard to the principle which we have sought to apply to the working of the central Government, namely, that where the Government find themselves in agreement with a conclusion of the legislature, their joint decision should ordinarily be allowed to prevail.

12. INDIAN NATIONAL CONGRESS ON MONT-FORD REFORMS.

I. Resolution of the Congress, Special Session, Bombay, 1918.

That this Congress appreciates the earnest attempt on the part of the Secretary of State and the

Delegation
in case of
administra-
tive
questions

Control of
Secretary
of State
over
provincial
matters

for the reserved subjects; and should fresh taxation be necessary, it should be imposed by Provincial Governments, as a whole, for both transferred and reserved subjects.

(C) *Legislature* :—

**'Reserved'
subjects**

(i) While holding that the people are ripe for the introduction of full Provincial Autonomy the Congress is yet prepared, with a view to facilitating the passage of the Reforms, to leave the departments of Law, Police and Justice (prisons excepted) in the hands of the Executive Government in all Provinces for a period of 6 years. Executive and Judicial Departments must be separated at once.

(ii) The President and the Vice-President should be elected by the Council.

**Jurisdiction
of Pro-
vincial
Legislature**

(iii) That the proposal to institute a Grand Committee shall be dropped. The Provincial Legislative Council shall legislate in respect of all matters within the jurisdiction of Provincial Government including Law, Justice, and Police, but where the Government is not satisfied with the decision of the Legislative Council in respect of matters relating to Law, Justice, and Police, it shall be open to the Government to refer the matter to the Government of India, and the Government of India may refer the matter to the Indian Legislature, and the ordinary procedure shall follow. But if Grand Committees are instituted, this Congress is of opinion that not less than one-half of the total strength shall be elected by the Legislative Assembly.

**Grand
Committee**

(iv) The proportion of elected members in the Legislative Council shall be four-fifths.

(E) *Parliament and the India Office* :—

**Gradual
relaxation
of control
by
Parliament
and India
Office**

(i) The control of Parliament and of the Secretary of State must only be modified as the responsibility of the Indian and Provincial Governments to the electorates is increased. No power over Provincial Governments now exercised by Parliament and by the Secretary of State must be transferred to the

Government of India, save in matters of routine administration, until the latter is responsible to the electorates.

(ii) The Council of India shall be abolished and there shall be two Permanent Under-Secretaries to assist the Secretary of State for India, one of whom shall be an Indian. India Council to be abolished

(iii) All charges in respect to the India Office establishment shall be placed on the British Estimates.

(iv) No financial or administrative powers in regard to reserved subjects should be transferred to the Provincial Governments until such time as they are made responsible regarding them to electorates and until then the control of Parliament and the Secretary of State should continue.

(v) The Committee to be appointed to examine and report on the present constitution of the Council of India shall contain an adequate Indian element.

(F) *Representation* :—

The proportion of the Muhammadans in the Legislative Council and the Legislative Assembly as laid down in the Congress-League Scheme must be maintained. Congress-League Scheme

**II. Resolution of the Congress,
Delhi Session, 1918.**

That this Congress. . . .reaffirms the Resolution. . . .relating to self-government passed at the Special Session of the Congress held in Bombay, subject to this: That in view of the expression of opinion in the country since the sitting of the said Special Session, the Congress is of opinion that:

(a) So far as the Provinces are concerned, full Responsible Government should be granted at once, and that no part of British India should be excluded from the benefit of the proposed Constitutional Reforms, and that, Full Responsible Government wanted for Provinces

**Question of
separate
electorate
for
Europeans**

(b) The non-official Europeans should not be allowed to form separate electorates, . . . and if they are allowed such representation, they should be limited to their proportion compared to the population of the Provinces concerned.

III. Presidential Address of Pandit Madan Mohan Malaviya, Delhi, 1918.

**Meaning
of 'self-
determina-
tion'**

**India
recognises
allegiance
to British
Crown.**

**Dominion
Status not
wanted**

**Congress
wants self-
government
as outlined
in Congress
League
scheme.**

Let us make it clear what we mean when we talk of self-determination. There are two aspects of self-determination, as it has been spoken of in the Peace proposals. One is that the people of certain colonies and other places should have the right to say whether they would live under the suzerainty of one power or of another. So far as we Indians are concerned we have no need to say that we do not desire to exercise that election. Since India passed directly under the British Crown, we have owned allegiance to the Sovereign of England. We stand unshaken in that allegiance. We gladly renewed our allegiance to His Majesty the King-Emperor in person when he was pleased to visit India in 1911 after his Coronation in England. We still desire to remain subjects of the British Crown. There is, however, the second and no less important aspect of self-determination, namely, that being under the British Crown, we should be allowed complete responsible government on the lines of the Dominions, in the administration of all our domestic affairs. We are not yet asking for this either. We are asking for a measure of self-government which we have indicated by our Congress-League scheme of 1916. We urge that the measure of self-government, *i.e.*, of responsible government, to be given to us should be judged and determined in the light of the principle of self-determination which has emerged triumphant out of this devastating war. In order that this should be done it is not necessary that the proposals of reform which have been elaborated by Mr. Montagu and Lord Chelmsford should be laid aside and a brand-new scheme be prepared. The Special Congress and the Moslem League have expressed their willingness

to accept those proposals with the modifications and improvements which they have advocated. This great Congress representing the people of all classes and creeds—Hindus, Mussalmans, Parsis and Christians—representing all interests, landholders and tenants, merchants and businessmen, educationists, publicists and representatives of other sections of the people—is assembled here to-day to express the mind of the people on this question. One special and particularly happy feature of this Congress is the presence at it of nearly nine hundred delegates of the tenant class who have come at great sacrifice, from far and near, to join their voice with the rest of their countrymen in asking for a substantial measure of self-government. The representative Congress of the people of India will determine and declare what in its opinion should be the measure of reform which should be introduced into the country. Let the British Government give effect to the principle of self-determination in India by accepting the proposals so put forward by the representatives of the people of India. Let the preamble to the Statute which is under preparation incorporate the principle of self-determination and provide that the representatives of the people of India shall have an effective voice in determining the future steps of progress towards complete responsible government. This will produce contentment and gratitude among the people of India and strengthen their attachment to the British Empire.

IV. Resolution of the Congress, Amritsar Session, 1919.

That this Congress reiterates its declaration of the last year that India is fit for full Responsible Government and repudiates all assumptions and assertions to the contrary wherever made.

That this Congress adheres to the resolutions passed at the Delhi Congress regarding the Constitutional Reforms and is of opinion that the Reform Act is inadequate, unsatisfactory and disappointing.

That this Congress further urges that Parliament should take early steps to establish full Responsible Government in India in accordance with the principle of self-determination.

This Congress trusts that so far as may be possible they will work the Reforms so as to secure an early establishment of full Responsible Government, and this Congress offers its thanks to Mr. E. S. Montagu¹ for his labour in connection with Reforms.

V. Presidential Address of Pandit Motilal Nehru, Amritsar, 1919.

.... The Act is not based on the wishes of the people of India and its provisions fall short of the minimum demands made by the Congress. But let us not belittle the good that the Act does us. We must recognise that it gives us some power and opens out new avenues of service for us which had hitherto been closed to Indians. I venture to think that our clear duty in these circumstances is to make the most of what we have got and at the same time to continue to press for what is our due.

* * * *

'Work the new reforms'.

I would beg of you to work the new reforms, utilise them for the betterment of the country and continue to press and agitate for our full demands.

The Act, as I have said, gives us some power, but it does not give us free citizenship or the power to check the misuse by the executive of the functions of law and order. No constitution can meet our needs unless it is accompanied with a guarantee and a clear declaration of our elementary rights which have recently been so ruthlessly violated in the Punjab².

Censure on Lord Chelmsford

1 The following resolution was adopted by the Amritsar Session of the Congress in 1919: "In view of the fact that Lord Chelmsford has completely forfeited the confidence of the people of this country, the Congress humbly beseeches His Imperial Majesty to be graciously pleased immediately to recall His Excellency."

2 The reference is to the Massacre of Jallianwallabagh and the atrocities committed by British Officers in other parts of the Punjab.

The sum total of the reserved powers in the hands of the Government or Governor-General in respect of legislation is indeed enormous. . . .

If the powers of the Governors and Governor-General in legislation are so wide and unrestricted, their powers in regard to the Budget appear to me on close examination nearly as wide and far-reaching. . .

'Enormous reserved powers' of Governor-General

* * * *

The Congress demand for the realisation of responsible government within a definite time limit was not acceded to, when the Montagu-Chelmsford scheme was framed, and in its place there was provided a series of enquiries at the end of 5 and 10 years respectively for the further transference of provincial subjects to popular control. Some of our countrymen welcomed these enquiries, because they looked like the old periodical Parliamentary enquiries into Indian affairs, which the Congress had asked to be revived in its earlier years. They also hoped successfully to survive the test and investigation that would be made and, like Oliver Twist, to go forward again and ask for more. The injustice of submitting a nation's birth-right to the jurisdiction and decisions of an outside body or committee was on the other hand deeply resented by many others, who felt that any such submission to jurisdiction and consequent acceptance of verdict would be essentially wrong and unworthy of the self-respect of Indians. . . .

Provision for Parliamentary enquiries

Perhaps the most serious omission in the Act, as finally passed by both houses, is that it fails to provide for any transference of administrative or political powers to the representatives of the people in the Central Government. . . .

Irresponsible Central Government

VI. Undelivered Presidential Address of Mr. C. R. Das, 1921.

Now the Preamble¹ of the Act is the key to the situation. "Whereas it is the declared policy of Parliament," so the Preamble runs. What is the

¹ See Document No. 8.

**Criticism of
Preamble of
Act of
1919**

**'Timid and
halting'
concession
to rights of
India'**

**'Peoples' of
India**

**Why should
Parliament
determine
time and
manner
of each
advance ?**

declared policy of Parliament? To recognise the inherent right of the Indians to responsible government? Not at all. To recognise the inherent right of India to be treated as a free and equal partner of the commonwealth of nations known as the British Empire? Not at all. But, mark the timid concession to the rights of India: "To provide for the increasing association of Indians in every branch of Indian administration and for the gradual development of self-governing institutions with a view to the progressive realization of responsible government in British India as an integral part of the Empire." I do not think a more halting concession could ever be made to the rights of a people. Now, is there anything in the Preamble to compel the British Parliament to recognise India, at any time, as a free and equal partner of the British Empire? I think not. "Progressive realization of responsible government in British India"! These are vague words, and they will not, at any time, tax the ingenuity of a British statesman. Omitting the second paragraph and coming to the third, we find: "that the time and manner of each advance can be determined only by Parliament upon whom responsibility lies for the welfare and advancement of the Indian peoples." Mark the word "peoples", not "people"—an assertion by Parliament that India is not one, but many. I, for one, am not prepared to submit to the insult offered to India in the third paragraph of the Preamble, and I feel bound to protest against it. We are quite prepared to undertake the responsibility for the welfare and advancement of the Indian people (not peoples), and I altogether deny that a foreign Parliament can possibly discharge its responsibilities in relation to a subject nation. I resent the doctrine that Parliament is to determine the time and manner of each advance, and I say that the whole object of the legislation, as disclosed in the third paragraph of the Preamble, is to perpetuate the domination of the British Parliament, which I cannot for a moment accept. The fourth paragraph holds out a distinct threat: "And whereas the action of Parlia-

ment," so it says, "in such matters must be guided by the co-operation received from those on whom new opportunities of service will be conferred, and by the extent to which it is found that confidence can be reposed in their sense of responsibility." In other words, if we are good boys, and if we satisfy the British Parliament that we have a sense of responsibility, then the British Parliament will consider whether we ought not to have a further instalment of reforms. In other words, we are perpetual infants, and the British Parliament is our sole guardian.

Ladies and Gentlemen, I have very great respect for the opinion of my political opponents, but I cannot accept the fundamental principle on which the Reform Act is based. I think that we should preserve our India's self-esteem, whatever the stage of our progress may be. I think that we should solemnly declare in open Congress, that freedom is inherent in every nation and that India has and possesses the right to develop her own individuality and to evolve her own destiny unhampered by what the British Parliament has decided or may decide for us. I think we should recognise that any power that in any way hampers or embarrasses the self-realization and self-fulfilment of the Indian nation is an enemy of India and must as such be resisted. I am willing to co-operate with England, but on one condition only, that she recognises this inherent right of India. That recognition you will not find anywhere in the Government of India Act, and I for one will not be a party to the perpetuation of British domination in India. . . . Freedom is my birth-right, and I demand a recognition of that right, not by instalments nor in compartments, but whole and entire. I do not doubt that victory will be on our side; but supposing we fail, we would at least have preserved inviolate our national self-respect and dignity, we would at any rate have repudiated the insult on which the Government of India Act is based. The difference between the Indian National

Indians
are
'perpetual
infants'.

India's
inherent
right to
freedom

**Difference
between
Congress
and
'Ministers
who are
working the
Reforms
Act'**

Congress and the Ministers who are working the Reforms Act seems to be fundamental, in that the former has its eye fixed on the ultimate and would reject as essentially false anything that does not recognise the freedom of the Indian people, whereas the latter have their eyes fixed on the departments of which they are in charge, and hope to attain freedom through the successful working of those departments.

**Position of
Ministers in
Provinces
in respect of
'Reserved'
subjects**

I will now consider whether the Act gives even the beginnings of responsible government to India, and whether the Legislature has any control over the purse. The two questions must be considered together. It is the view of the Moderates in Bengal that out of seven members of the Bengal Government, five are Indians. The view is entirely erroneous. I think I am right in saying that provinces are governed, in relation to reserved subjects, by the Governor-in-Council, and in relation to transferred subjects, by the Governor, acting with Ministers. The statute makes no provision whatever for the joint deliberation by the Governor and his Council and his Ministers sitting together, except in regard to proposals for taxation and borrowing, and the framing of proposals for expenditure of public money. In regard to the reserved subjects, and these are subjects which are of vital importance to us as a nation in our struggle for political liberty, the Ministers have no voice whatever. I think I am right in saying that they are the dumb spectators of the fight that is now going on between us and the Government. They are not part of the Government to consider whether, in relation to the non-co-operation movement, a repressive policy should or should not be initiated in the country. Their advice will not be sought when the Local Government has to consider the question whether Mahatma Gandhi ought or ought not to be arrested. If I am right in my view as to the position of the Ministers in relation to reserved subjects, then I suggest to my Moderate friends that they are under an entire misapprehen-

**'Dumb
spectators'**

sion when they say that majority of the members of the Government are Indians. The truth is, that in relation to the reserved subjects, the Indian element is in a minority and cannot affect the policy of the Government in the slightest degree, provided the Governor and the English members of the Council combine against it.

I have now to consider the position of the Ministers and the relation between the Ministers and the Legislature in regard to the transferred subjects. My first point is, that it is a mistake to suppose that any "subject" has been transferred to the Ministers. I concede that certain departments have been transferred, but I maintain that they have been transferred subject to the encumbrances created by a century of bureaucratic rule, and the Ministers have no power whatever to discharge those encumbrances.

Position of Ministers in Provinces in respect of 'Transferred' subjects

This brings me to a question of great importance, and that is whether the Legislature has any control over the purse. The Moderates maintain the affirmative of the proposition; I maintain the negative. I shall presently refer to the provisions of the Act to support my position; but I have a witness of undoubted position and respectability in my favour, whose evidence I should like to place before you. In the course of the general discussion on the budget in one of the Councils, a Minister said as follows: "The two poor men who have been put down here as Ministers are presumed to be clothed with all the powers of Ministers in the House of Commons, and therefore they are called upon to account for everything for which perhaps a Minister in the House of Commons is responsible. . . . The Minister here begins his life by getting a dole of money that is given by those who are in charge of the whole administration."

Provincial legislature has no control over the purse.

Testimony of a Minister

Under the rules framed under the Government of India Act, the framing of proposals for expenditure in regard to transferred and reserved subjects is a

Governor's control over the purse matter of agreement between the Members of the Executive Council and the Ministers; but if they do not agree as to the apportionment of funds between reserved and transferred departments respectively, the Governor has the power to allocate the revenue and balances of the province between reserved and transferred subjects by specifying the fractional proportions of the revenues and balances which shall be assigned to each class of "subjects."

Helpless position of Provincial Legislature in respect of the purse It (Provincial Legislature) has no power whatever to say in what proportion the revenue of the country should be allocated between reserved and transferred departments respectively; it has no control whatever over the revenue allocated to the reserved subjects. All that it can do is to say to the Ministers: "We refuse our assent to your demand" or, "we reduce the amount referred to in your demand either by a reduction of the whole grant or by the omission or reduction of any of the items of expenditure of which the grant is composed." It is ridiculous to describe the limited control exercisable by the Council in relation to the transferred subjects as "an effective control over the purse."

Imperfect control of Ministers over administration In administrative matters, the position of the Minister is no better. The Act provides that in relation to transferred subjects, the Governor shall be guided by the advice of his Ministers, unless he sees sufficient cause to dissent from their opinion, in which case he may require action to be taken otherwise than in accordance with that advice. In a dispute between the Minister in charge of the department of health and his officer on a question of policy, it is possible for the Governor to support the officer against the Minister. In matters of legislation in relation to the transferred subjects, there is in theory some power in the Legislature, but in practice the finance department, controlled by a member of the Executive Council, would have the last word on the subject, for I can conceive of no legislation which does not involve expenditure of money, and it is the duty of the finance department (of which, be it re-

Control of Department of Finance over legislation

membered, the Minister is not a Member), to examine and advise on the scheme of the new expenditure for which it is proposed to make provision in the estimates.

This, then, is the scheme which is being worked by the Ministers, and we have been solemnly assured by the Moderates that the beginning of Swaraj is to be found in the scheme. Much as I would like to end all unnecessary conflict, I cannot recommend to you the acceptance of the Act as a basis for co-operation with the Government. I will not purchase peace with dishonour, and so long as the Preamble to the Government of India Act stands and our right, our inherent right to regulate our own affairs, develop our own individuality and evolve our own destiny, is not recognised, I must decline to consider any terms of peace.

Act of 1919
—not a proper basis for co-operation

"I will not purchase peace with dishonour".

VII. Presidential Address of Mr. S. Srinivasa Aiyangar, Gauhati, 1926.

That Dyarchy is neither a helpful stage in the progressive realisation of Responsible Government nor serves as an apt machinery for grinding down good government, has been the unanimous verdict of experience and is now practically admitted on all hands. Lord Birkenhead himself has referred to it more than once in apologetic terms though he insists upon our working it. Its true purpose is not merely to provide for the administration of certain subjects by the Governor and his Executive Council, but to attenuate the power of the Ministers and the control of the Legislature over the transferred subjects. Under this grotesque system, the Ministers are always under official tutelage and domination so that they cannot breathe the oxygen of freedom. The joint deliberation between Ministers and Members of Council for which Lord Willingdon took credit proved to be in the interests of the reserved half. Even without it, most matters relating to transferred subjects require to be considered by those in charge of the reserved departments and to that extent are

Criticism of Dyarchy

Position of Ministers

Over-
whelming
importance
of
'Reserved'
subjects

'Irresponsi-
ble
autocracy'

shaped by the opinion of that half of the Government. This was fully established by the evidence before the Reforms Inquiry Committee. The fact that members of the Civil Service are themselves Members of Government makes the Ministers helpless in their relation to the members of the Civil Service. Again, the rules relating to financial restrictions and the control exercised by the Finance Member as one in charge of a reserved subject over important aspects of transferred subjects, make the power of the Ministers as unreal as that of puppets. Lastly, the division of subjects between the reserved and the transferred halves is such that the pith and marrow of a government are with the former. As regards the conflicts between the two halves of the Government, the Governor is made in effect a constitutional dictator in the province, and Dyarchy can be tempered only by the frequent exercise of his powers. Further, the power of the Governor on his sole authority to make laws relating to a reserved subject contrary to the decision of the Legislative Council furnishes a capital instance where the reformed Legislative Councils possess much less power than their predecessors. That one man can make laws quite as valid as the laws made by a Legislature and in the teeth of the latter, proves our charge that the Reform Act has in reserved departments set up an irresponsible autocracy.

No respon-
sible
government
even in
respect of
'Trans-
ferred'
subjects

The position as regards transferred subjects is no whit better, though we frequently make Dyarchy the gravamen of our charge against the Reform Act as if its removal alone will end all our troubles. For, we must remember that in respect of transferred subjects there is no responsible government and the mere transfer of reserved subjects to additional Ministers on the same statutory conditions as at present govern transferred subjects will not improve matters. At the outset, each Legislative Council has a solid block of nominated and official members to support the views or policy of the bureaucracy on questions relating to transferred subjects though a majority of

elected members may decide otherwise. Thanks to the nominated members and to the number of special constituencies, supple, reactionary or obscurantist, the composition of a Legislative Council is such that the Ministers have to depend upon the support of the Governor and his Executive Council. Nor is it very difficult for a Governor to form, against a majority group of elected members, a Ministry with the aid of a minority group of elected members and of his own nominated and protected block. This has been done again and again in every province. This inherent vice in the structure of a Legislative Council deprives it of any real representative character and its elected members of any adequate power. Secondly, under existing conditions, the power of appointing Ministers exercised by a Governor is not a mere technical mode of naming the established leaders of the majority in the Council but is a substantial power of patronage by which a nobody or any body can be made a *benami* leader to carry out the Governor's policy. Thirdly, we all know that a Legislative Council has no control over the items of expenditure known as non-votable under each transferred head including the salaries and allowances and all other payments of officials belonging to superior services in that department. These non-votable items amount to a high percentage of the expenditure relating to each transferred subject. Fourthly, the Ministers have little or no control over the members of the Civil or other public services serving in departments dealing with transferred subjects, and the Governor has and exercises the power of making all appointments to posts in the transferred departments. The statutory independence of the Indian Civil Service is the most outstanding feature of the Reform Act. All the parliamentary apparatus of a responsible government will prove to be a costly and pompous futility unless the completest control over Indian Civil and other Services is unreservedly secured to Ministers fully responsible to a wholly elected legislature. Fifthly, the Governor is empowered to over-ride the Minister's decisions on ques-

Composition
of the
Legislature

Governor's
power to
appoint
Ministers

'Non-
votable'
items of
expenditure

Position of
the Indian
Civil
Service

Governor's
special
powers

tions relating to a transferred subject and direct him to act otherwise. Sixthly, the Governor has an emergency power—the emergency to be determined by himself—to authorise expenditure notwithstanding a vote of the Legislative Council in respect of transferred subjects. Seventhly, the Governor has power to stop legislation in respect of transferred subjects notwithstanding the opinion of the Legislative Council. Eighthly, he can return a Bill relating to a transferred subject to the Council for reconsideration with his recommendations which are in effect obligatory. What this power means was forcibly illustrated by Lord Willingdon in Madras in connection with the Hindu Religious Endowments Bill. Ninthly, when a Governor cannot through his Ministry manage a Council to his satisfaction, he can himself administer the transferred subjects as happened in the Central Provinces. Tenthly, a Minister can hold office during the Governor's pleasure which does not mean the formal expression of the Council's pleasure but his own independent pleasure against the opinion of the Council, as was vividly demonstrated by Lord Lytton in Bengal. Eleventhly, the Governor is entitled to disallow any motion for the adjournment of the business of the Council to discuss a definite matter of urgent public importance even when it relates to a transferred subject. Lastly, the allocation of the revenues for the administration of transferred subjects depends primarily on the will of the reserved half and of the Governor and not on the decision of the Legislative Council.

I have restated the position under the Act only to make it clear that even if Dyarchy goes, a Legislative Council will have control over the transferred subjects only if and when the Governor allows and not otherwise.

Views of
the
Muddiman
Committee
on Dyarchy

The Majority Report of the Reforms Inquiry Committee concedes that the Dyarchy which was introduced is "clearly a complex confused system having no logical basis, rooted in compromise and defensible only as a transitional expedient." It is

not possible to imagine to what it is a transition or how it is defensible except as an expedient for putting off the grant of Swaraj or of substantial reforms leading to Swaraj.

Nor can it be pretended that the Central Government is at all responsible to the Indian Legislature. In the first place, that Legislature has no power of the purse. Nearly three-fourths of the expenditure of the Government of India, excluding that on Railways, is withdrawn from the vote of the Legislative Assembly, and as to the remaining fourth, the Government is empowered to restore any demand which has been refused or reduced by it. The Governor-General has also an emergency power to authorise at his discretion any expenditure, he being the sole judge of the emergency. In the next place, the Governor-General may direct the stay of any bill, clause or amendment. In the third place, in addition to the power to make temporary ordinances, the Governor-General is given, what he had not before the Reforms Act, the autocratic power of certifying any bill and signing it as a permanent law on his sole and absolute authority notwithstanding the refusal of the Legislature. Fourthly, the Assembly is neither wholly nor in reality a representative and democratic chamber. Between a third and a fourth of its strength consists of nominated members and a three-fourths majority of elected members is required to defeat the Government and to enforce the popular will. . . . Lastly, there is for the Government the additional safeguard provided by the second chamber. And the Council of State is so planned and constructed as to checkmate the Assembly and to form an impregnable citadel for the Government.

Central Government not responsible to Legislature

'Legislature has no power of the purse.'

Governor-General's control over legislation

Legislature not a representative and democratic chamber

It is then abundantly clear, that the centre of gravity both in the Central Government and the Provinces, alike in transferred and in reserved departments, when analysed closely, is, both in fact and in constitutional theory, in the Executive Government, in other words, in the bureaucracy. It

"Statutory hypocrisy" would therefore be a tragedy if we still sought to discover, in this statutory hypocrisy, the germs of self-government.

13. INSTRUMENT OF INSTRUCTIONS TO THE GOVERNOR-GENERAL, 1921.

VI. And inasmuch as the policy of Our Parliament is set forth in the Preamble to the said Government of India Act, 1919, we do hereby require Our said Governor-General to be vigilant that this policy is constantly furthered alike by his Government and by the Local Governments of all Our presidencies and provinces.

* * * *

**Political
goal of
India**

IX. For above all things it is Our will and pleasure that the plans laid by Our Parliament for the progressive realisation of responsible government in British India as an integral part of Our Empire may come to fruition, to the end that British India may attain its due place among Our Dominions. Therefore, We do charge Our said Governor-General by the means aforesaid and by all other means which may to him seem fit to guide the course of Our subjects in India whose governance We have committed to his charge so that, subject on the one hand always to the determination of Our Parliament, and, on the other hand, to the co-operation of those on whom new opportunities of service have been conferred, progress towards such realisation may ever advance to the benefit of all Our subjects in India.

14. INDIAN NATIONAL CONGRESS AND THE REFORMED LEGISLATURES.

I. Presidential Address of Mr. C. R. Das, Gaya, 1922.

**'Boycott
from with-
out'**

Hitherto we have been boycotting the Councils from outside. We have succeeded in doing much—the prestige of the Councils is diminished, and the country knows that the people who adorn these chambers are not the true representatives of the people. But though we have succeeded in doing

much, these Councils are still there. It should be 'Boycott the duty of the Congress to boycott these Councils from within' more effectively from within. Reformed Councils are really a mask which the Bureaucracy has put on. I conceive it to be our clear duty to tear this mask from off their face. The very idea of boycott implies, to my mind, something more than mere withdrawal. The boycott of foreign goods means that such steps must be taken that there may be no foreign goods in our markets. The boycott of the Reformed Councils, to my mind, means that such steps must be taken that these Councils may not be there to impede the progress of Swaraj. The only successful boycott of these Councils is either to mend them in a manner suitable to the attainment of Swaraj or to end them completely. That is the way in which I advise the nation to boycott the Councils.

* * * *

Another question is often asked: suppose we end these Reformed Councils—what then? Could not the same question be asked with regard to every step the Congress has hitherto undertaken in the way of breaking, of destroying institutions? If we had succeeded in destroying the Educational Department, might not somebody ask—what then? If we had succeeded in destroying the legal institutions, might not the question be put with equal relevance? The fact is, destruction itself will never bring us Swaraj. The fact further is that no construction is possible without destruction. We must not forget that it is not this activity or that activity which by itself can bring Swaraj. It is the totality of our national activity in the way of destruction and in the way of creation, that will bring Swaraj. If we succeed in demolishing these Reformed Councils, you will find the whole nation astir with life. Let them put other obstacles in our way; we shall remove them with added strength and greater vitality.

II. Presidential Address of Pandit Jawaharlal

Nehru, Lahore, 1929.

I feel that the step the Congress took some years ago to permit Congressmen to enter the Councils was

**Policy of
Council
entry
should be
given up.**

an inevitable step and I am not prepared to say that some good has not resulted from it. But we have exhausted that good and there is no middle course left today between boycott and full co-operation. All of us know the demoralisation that these sham legislatures have brought in our ranks and how many of our good men, their committees and commissions lure away. Our workers are limited in number and we can have no mass movement unless they concentrate on it and turn their back to the palatial Council Chambers of our Legislatures. And if we declare for independence, how can we enter the Councils and carry on our humdrum and profitless activities there? No programme or policy can be laid down for ever, nor can this bind the country or even itself to pursue one line of action indefinitely. But today I would respectfully urge the Congress that the only policy in regard to the Councils is a complete boycott of them. The All-India Congress Committee recommended this course in July last and the time has come to give effect to it.

**'Real
struggle'**

This boycott will only be a means to an end. It will release energy and divert attention to the real struggle which must take the shape of the non-payment of taxes, where possible, with the co-operation of the labour movements, general strikes.

15. INDIAN NATIONAL CONGRESS AND THE MUSLIMS.¹

**(Presidential Address of Maulana Mohammad Ali,
Cocanada, 1923).**

**Why
muslims
did not
join
Congress
at first.**

.....When, in 1885, some Indian leaders, assisted by their British sympathisers, founded the Indian National Congress, the Mussalmans of India did not participate in the movement except in a few individual cases. If their lack of Western education made them unfit to take part in a movement essentially that of the classes educated according to

¹ See *Indian Constitutional Documents*, Vol. II, Document No. 24.

Western notions, their political temper made them an element that was not unlikely to prove dangerous to any political movement. They had already lost the rule of India, but the tradition of that rule had survived. This had increased the aversion they had always felt for the new type of education. The rule of India had finally passed from Muslim into English hands by slow and hardly perceptible degrees in the hundred years that intervened between the battle of Plassey and the Indian Mutiny; but the Mussalmans had not ceased to regard the rulers of India as something very inferior to themselves in civilisation and culture. This storm of ill will and disdain had been gathering force for a whole century, and was at last precipitated in 1857. The Mutiny began near Calcutta as an affair of the Indian army, but in the storm-centre of Delhi and of my own Province, where it had to be fought out if English rule was to continue in India, it soon attracted to itself many forms of discontent, and religion was inextricably mixed up with politics. Although so many Mussalmans had, at enormous risk to themselves, assisted the British at a time when hardly any one could have predicted their eventual success with any degree of assurance, it was the Muslim aristocracy in those parts that suffered most from the terrible aftermath of the Mutiny. In fact, in its permanent results, even more than in some of its terrors, it could, without any great exaggeration, be compared to the social upheaval that the French Revolution meant to the old nobility of France. The remnants of Muslim aristocracy, deprived of all influence and of many of its possessions, certainly did not expect the return of Muslim rule. Nevertheless, a whole generation of Mussalmans kept sullenly aloof from all contact with the culture of the new rulers of India which in their heart of hearts they still despised. They were in no mood to take advantage of the education provided by the Universities of Calcutta, Bombay and Madras, founded in the very year in which the Mutiny convulsed the regions which formed the political centre of Muslim India. It was a natural consequence of

The
Muslims
and the
Mutiny

Repugnance to
Western
education

this attitude of Mussalmans who sulked in their tents that when, nearly thirty years later, a new generation of Indians, who owed their education to the English, inaugurated a political movement on Western lines, Indian Mussalmans should be unfit by lack of such education to participate in that movement. Nevertheless, the Congress which called itself "Indian" and "National" felt the need of Muslim participation, for it could not justify its title without it.

Sir Syed Ahmad prevented Muslims from joining Congress.

Efforts were therefore made early enough to enlist Mussalmans as delegates. But at this juncture, Sir Syed Ahmad Khan, the great pioneer of Western education among Mussalmans, stepped into the political arena, and in two historic speeches, one delivered at Lucknow on the 28th December, 1887, and the other at Meerut on the 16th March, 1888, decisively checked whatever signs the Mussalmans had shown of political activity in support of the Congress movement. It is by no means a difficult task to criticise those speeches, for they contained many fallacies to which no politically-minded Mussalman could subscribe today. But I am not one of those who declare, merely on the strength of some ill-advised expressions characteristic of so militant a controversialist as Syed Ahmad Khan, that he was opposed to the co-operation of Hindus and Mussalmans.

Sir Syed Ahmad was 'an ardent patriot inspired with the love of Indian unity'.

Although his own public career after retirement from Public Service was identified with a movement for the uplift of his own community, he was a good Indian as well as a good Muslim, and many of his speeches prove him to have been an ardent patriot inspired with the love of Indian unity. And those who knew him personally can testify to the staunchness of his friendship with many Hindus, which could not have survived the narrow prejudices of which he has sometimes been accused.

No more true is the charge that he was opposed to Muslim participation in politics for all time. Whatever arguments he may have used in the two

political utterances to which I have referred, to convince his Muslim hearers, there were two arguments, and two only, that had obviously convinced Syed Ahmad Khan himself of the undesirability of Muslim participation in the Congress at the time. He realised to the full that nothing would suit the temper of the Mussalmans of his day better than the vocation of critics of their British supplanters in the governance of India; and he also realised that such a pursuit would be as dangerous to the continuance and progress of a peaceful political movement like the Congress as it was easy. This was the first argument that impelled Syed Ahmad Khan to keep his community under restraint in politics. The second argument was no less potent. Mussalmans must educate themselves if they desired the uplift of their community, and yet it was no easy task to reconcile Mussalmans to Western education even in an institution of their own; which unlike Government colleges and schools, would not divorce religious from secular learning. The easy pursuit of a policy in which the Muslims could act as destructive critics of the hated infidel Government was sure to offer superior attractions to the dull and drab constructive programme of the educationist, and he therefore set himself to oppose all diversion of Muslim activities into the more attractive, but for the time being less useful, political channel. Reviewing the actions of a by-gone generation today, I must confess I still think the attitude of Syed Ahmad Khan was eminently wise, and much as I wish that some things which he had said should have been left unsaid, I am constrained to admit that no well-wisher of Mussalmans, nor of India as a whole, could have followed a very different course in leading the Mussalmans.

Why Sir Syed Ahmad opposed Muslim participation in Congress at that time

Muslims not to become 'destructive critics' of Government

Justification of Sir Syed Ahmad's policy

Be it remembered that the man who enunciated this policy was not at the time a *persona grata* to the major portion of the community which he sought to lead. He was hated as a heretic because of the heterodoxy of his aggressive rationalism in interpreting the Holy Quran, and his militant opposition to

In spite of his rationalism in religion, Sir Syed Ahmad's 'political lead' was followed by the Muslims.

popular superstitions believed in by the bulk of the orthodox and to shackling customs consecrated by time, though wholly unauthorised by Islam. He was abused and vilified by hundreds of thousands of his co-religionists, and for long the college that he had founded at Aligarh was the *bete noire* of the pious Muslim. And yet the entire community followed his political lead without a murmur. Neither fallacious arguments nor even political clap-trap could have possessed such potency, and it is my firm belief that his advocacy succeeded mainly because of the soundness of the policy advocated.

No political organisation of the Muslims

For two decades thereafter the Mussalmans had hardly any politics or any political institution worth the name. On important occasions when Syed Ahmad Khan, and, of course, his British supporters, thought that any demand of the Congress if satisfied would not be productive of good for the Mussalmans, he would call together a few of his friends, mostly Trustees of the Aligarh College, who used to form a society bearing some such name as the "Muslim Defence Association," and a resolution of this body would be published in the *Pioneer* and in Syed Ahmad Khan's own local weekly newspaper in due course. That was all that the Mussalmans would do in those days in the field of politics.

Sir Syed Ahmad was not a sycophant.

I am far from denying that Syed Ahmad Khan knew perfectly well that his policy was more than acceptable to his official supporters, who would have in all likelihood put every possible obstruction in the way of his college and his Educational Conference if he had followed another less acceptable to them. But a very close study of his character leads me to declare that he was far from possessing the sycophancy with which some of his political critics have credited him. Indeed, even the opportunism of which his policy savoured could not have been entirely palatable to a nature so independent as his. . . .

. . . I think I have conclusively proved that the Mussalmans did not rush into politics, that the

Mussalmans did not rush into the Congress, that the Mussalmans did not rush into non-co-operation with the English and even to co-operation with their Hindu fellow-countrymen. But every step that they took, they took deliberately, slowly, almost painfully and reluctantly. But the force of circumstances and the reality of the situation drove them to take that step and it is that reality which is to keep them where they are and not let them go out of the Congress into those alluring backwaters of old politics in which the Government kept us so long and wants us to keep us today. . . . The Mussalmans had lost their rule of India. It had slipped out of their hands gradually and imperceptibly in the long course of a hundred years between the battle of Plassey and the Indian Mutiny of 1857, as it is generally styled. When they woke up at last to discover the true situation—they did not awake fully, they were still half asleep. They had lost their rule, but its traditions still remain with them and instead of working for victory after defeat, they began to sulk in their tents. They were justified to possess that temper, a temper in which they would have ruined any peaceful movement as the Indian National Congress has always been. They would have been a most dangerous thorn in the body-politic of the nation, because they were in that temper and were not sufficiently educated in Western lore. At least in the pre-Gandhian days, I believe the Indian National Congress was a movement only of the educated classes, of those who had been educated along Western ways. Syed Ahmed Khan. . . . foresaw in the thin tenor of the Mussalmans that to let them go into a body of critics of the Government would be to let them go into a place where they would revel in criticism and do nothing else; they would have even wrecked the Congress. I have also said here, you will notice, I have traced the close connection between the foundation of the Indian National Congress and the foundation of the first important national or rather communal Muslim political institution known as the Muslim League. It practically took 30 years, which corresponds to the

Cautious
movement
of the
Muslims

Temper
of the
Muslims
was
unfavour-
able to
peaceful
political
movement.

**Aligarh
College**

growth of a new generation, it took 30 years from the foundation of the Universities of Calcutta, Madras, and Bombay to come into being. The first political educational centre was started at Aligarh. . . .

**Foundation
of Muslim
League**

. . . . It was no easy task that Syed Ahmad Khan had accomplished in founding an Anglo-Oriental College of his own community within two decades of the Indian Mutiny in the very regions which had formed the storm centre in 1857. In obedience, as it were, to a law of nature, once more nearly thirty years after the foundation of this College, there came into being a political institution of the Mussalmans who had not availed themselves of the educational facilities provided by the state Universities, and could not consequently share in the political awakening which those Universities had indirectly brought about. And it is not without significance that fairly prominent among the founders of the Muslim League at Dacca at the end of 1906 were some alumni of Syed Ahmad Khan's own College.

**Aga Khan's
Deputation
of 1906**

This inaugurated a new era in the political life of the Indian Mussalmans. Some months previously a Muslim Deputation had waited at Simla on the Viceroy, Lord Minto, to place before him and his Government a statement of the Muslim demands in connection with the Minto-Morley Reforms then foreshadowed. To follow the fashion of British journalists during the War, "there is no harm now in saying" that the Deputation's was a "command" performance! It was clear that Government could no longer resist the demands of educated Indians, and, as usual, it was about to dole out to them a morsel that would keep them gagged for some years. Hitherto the Mussalmans had acted very much like the Irish prisoner in the dock who, in reply to the judge's inquiry whether he had any counsel to represent him in the trial, had frankly replied that he had certainly not engaged counsel, but that he had "friends in the jury"! But now the Muslims' "friends in the jury" had themselves privately urged that the accused should engage duly qualified counsel

like all others. From whatever source the inspiration may have come, there is no doubt that the Muslim cause was this time properly advocated. In the common territorial electorates the Mussalmans had certainly not succeeded in securing anything like adequate or real representation, and those who denounced and deplored the creation of separate electorates for which the Mussalmans had pleaded should have remembered that separate electorates were the consequence, and not the cause, of the separation between Mussalmans and their more numerous Hindu brethren.

Origin of
Separate
Electorate

* * * *

But little could the official supporters of the Muslim community have suspected at the time that, paradoxical as it may seem, the creation of separate electorates was hastening the advent of Hindu-Muslim unity. For the first time a real franchise, however restricted, was being offered to Indians, and if Hindus and Mussalmans remained just as divided as they had hitherto been since the commencement of British rule, and often hostile to one another, mixed electorates would have provided the best battle-ground for inter-communal strifes, and would have still further widened the gulf separating the two communities. Each candidate for election would have appealed to his own community for votes, and would have based his claims for preference on the intensity of his ill-will towards the rival community, however disguised this may have been under some such formula as "the defence of his community's interests." Bad as this would have been, the results of an election in which the two communities were not equally matched would have been even worse, for the community that failed to get its representative elected would have inevitably borne a yet deeper grudge against its successful rival. Divided as the two communities were, there was no chance for any political principles coming into prominence during the elections. The creation of separate electorates did a great deal to put a stop to this inter-communal warfare, though I am far from oblivious of the fact

Separate
Electorate
'hastened
the advent
of Hindu-
Muslim
unity'.

Separate
Electorate
intensifies
communal
feelings.

that when inter-communal jealousies are acute, the men that are more likely to be returned even from communal electorates are just those who are noted for their ill-will towards the rival community.

16. DYARCHY AT WORK, 1921-1924.

[The Reforms Enquiry Committee was appointed in 1924 "(1) to enquire into the difficulties arising from, or Defects interent in, the working of the Government of India Act and the Rules thereunder in regard to the Central Government and the Governments of Governor's provinces; and (2) to investigate the feasibility and desirability of securing remedies for such difficulties or defects, consistent with the structure, policy and purpose of the Act, (a) by action taken under the Act and the Rules, or (b) by such amendments of the Act as appear necessary to rectify any administrative imperfections". Sir Alexander Muddiman was the Chairman of the Committee and the members were Mian Sir Muhammad Shafi, Maharajadhiraja Sir Bijay Chand Mahtab, Sir Tej Bahadur Sapru, Sir Arthur Froom, Sir Sivaswami Iyer, Sir Henry Moncrieff Smith, Mr. M. A. Jinnah, Dr. R. P. Paranjpye. Sir Tej Bahadur Sapru, Sir Sivaswami Iyer, Mr. M. A. Jinnah and Dr. R. P. Paranjpye submitted a Minority Report.]

I. Extracts from Majority Report of Reforms Enquiry Committee.

6. The present constitution came into operation at the beginning of 1921. It has thus not yet been in operation for four years. We are required now to report upon its working, but it may be argued that the period for which it has actually been in force is too short to afford sufficient experience for a well founded analysis. Several Local Governments have referred to this as a difficulty in the way of arriving at conclusions which they say is enhanced by the atmosphere in which the constitution has been worked, which resulted, *inter alia*, in the abstention from any participation in the reforms of a number of leaders of Indian opinion. . . . The education of the electorate has been retarded by the non-co-operation movement. . . . that movement. . . diverted for three years the main stream of political activity from

Effect of
non-co-
operation
movement
on working
of reforms

any endeavour to work the new Legislative Council. . . .

* * * * *

8. The Madras Government report that the transitional constitution has worked with a considerable measure of success in Madras. Some progress has been made towards the understanding of the system of parliamentary government both by the representatives returned to the Council and by those who exercised the vote; political education has begun, and the population, both urban and rural, has become more articulate and to some extent more conscious of the meaning and value of the vote. . . . The Governor in Council concludes that, if an earnest endeavour to work on constitutional lines is a qualification for political advance, the Madras Presidency has shown itself fitter for an advance than any other province. The Madras Ministers. . . insist that there should now be a complete transfer of all provincial subjects. The Governor in Council. . . is not prepared to agree that the time for it has yet come.

Success of
reforms in
Madras

Demand for
complete
transfer
of all
provincial
subjects

9. The Bombay Government say that there were no organized parties in the first Council, and that therefore there could be no organized support of the Ministers. In the present Council the Swarajist party is the only non-official party united by bonds other than communal. It is the strongest in numbers but does not command a majority, and it is pledged to a policy of refusal of political responsibility. The Ministers were therefore necessarily selected from the smaller groups, and this is the first and most important cause of the weakness of their present position. Having no adequate support from their followers they are obliged to rely largely for support upon the official vote, and accordingly the distinction between the two halves of the Government is obscured. . . .

Working of
reforms in
Bombay

Weakness of
Ministers

10. The Bengal Government say that the obstacle which is the root of all the difficulty in working the transitional constitution is the Indian conception of the government as something in which the

Working of reforms in Bengal people have no share or responsibility, and which it is therefore the duty of every progressive politician to oppose. It is of the first necessity that the elected members should realise their powers and use them. As matters stand, there is no party with a real constructive programme. The Ministers are left to evolve a policy. . . . and this the members proceed to criticise. These members have, however, no policy to put in its place, and, if the Ministers were replaced by others, the position would be just the same. The Council has thus failed to grasp its power to make the Government and by supporting it to carry through the schemes which it considers would be beneficial to the country. In the first Council progress was made and some solid achievements were recorded. The Ministers also were able to influence a sufficient number of the members to make it possible, with the aid of officials, to carry through a considerable amount of useful legislation. The second Council contains a large and influential body belonging to the non-co-operation party which is pledged to prove that the present constitution is unworkable. This body was joined by the independents, and the combined party commands more than 60 votes in a House of a total strength of 140. . . .

First Council

Second Council

Working of reforms in U. P. 11. The Government of the United Provinces say that it is constantly alleged by their enemies and critics that the reforms have failed. They say that, if this means that the constitution has definitely broken down, the statement must be emphatically denied. . . .

Difficulties enumerated by U. P. Government 18. . . . Ministers and legislators have acquired some acquaintance with the practical difficulties of administration, but political development is still in the most elementary stage. The electors do not recognise that the legislature is their representative, and practically no attempt has been made by any party to educate them in their duties and responsibilities. . . . In the legislature well-organised parties (except for the Swarajist) are non-existent; the inter-

play of personal factors is incessant; and the formation of stable combinations is impeded by the cross divisions of race, religion and interest. There is no large body of impartial opinion upon which the Minister can rely, and he can rarely take a strong line in opposition to any substantial or clamant section. In short, though this is certainly not surprising, neither the principle of responsibility to the electorate nor the principle of party cohesion has been established in any strength. . . . The Governor in Council says that dyarchy is obviously a cumbrous, complex, confused system, having no logical basis, rooted in compromise and defensible only as a transitional expedient. . . .

**Dyarchy
condemned**

14. . . . A portion of the Hindu political element clearly welcomed the reforms as likely to afford them an opportunity of confirming a position gained by superior education and capacity in the use of political methods. It is doubtful whether the Muhammadans at large or the agricultural community were at that time aware of the opportunities which the reforms would give them for developing their own interests. The authors of the scheme certainly could not have foreseen the speed with which its working would drive the two main communities into open dissension and would develop antagonism between urban and rural interests. . . .

**Working of
reforms in
the Punjab**

**Communal
dissensions**

15. The immediate aim of the reforms was to arouse political consciousness by constituting and training an electorate and its representatives. There is not as yet evidence of the existence of a thinking and selective electorate in the Punjab, capable of exercising its vote on considerations of policy. The figures do not argue any undue apathy on the part of the electors: in the election of 1920, the percentage of electors voting was low owing to the prevalence of non-co-operation doctrines, but in the second general election 49 per cent. of the electors recorded their votes. There is, however, little evidence of that close touch between representatives and electors which constitutes the vitality of a representative

**No "think-
ing and
selective"
electorate**

No close touch between representatives and electors

system. The election address is practically unknown; the constituency judges of the personality rather than the programme of the candidate. The representative seldom, if ever, addresses his electors or canvasses their view on any project of legislation before the Council. . . .

Communal policy of Education Minister

. . . .The main criticism which is made against the departments administering the transferred subjects is that the Ministry of Education has subordinated the interests of its departments to the support of the communal interests of Muhammadans. It was not unreasonable that the Minister should attempt to secure definite opportunities to the community which constitutes his chief support in the Council. The further progress of the tendency must, however, be watched with some care in the interests of the reforms. . . .

"Ministers willing to co-operate with the executive"

16. . . .The dyarchical scheme necessarily contains anomalies, and it cannot be contended that the Punjab offered a really suitable field for the introduction of a divided responsibility. So far Ministers willing to co-operate with the executive have been found who have been supported by a party which has not attempted to force them into an extreme position. . . .In the Punjab, judging by the attitude of the press, which is subject to Hindu control, there is so little effective demand for further transfers as to create a suspicion that there would be some gratification if the transfer of certain subjects were revoked. At least constant efforts are made to persuade the Governor to control the Ministry in order to safeguard the communal interests of the minority in the Council.

No demand for transfer of new subjects

* * * *

Working of reforms in Bihar and Orissa

18. . . .One may search in vain for signs that three years of the reforms have educated the electorate to the meaning of an election and the business of a legislature. . . .the Bihar and Orissa Government include among the causes which have contributed to the non-success of the reforms the failure to create a Ministerial party prepared to support the Ministers

in carrying out a definite programme. The constitutional structure has been borrowed from England, but the foundation essential to carry it is lacking in India. . . . Another cause is the general political inexperience of the country and the reluctance of the average Indian members to face personal opposition or unpopularity. . . .

Causes of
"non-
success" of
reforms

19. The Central Provinces Government say that the value of the experiment in responsible government during the first Council was weakened, firstly, by the lack of connection between the members and their constituents, secondly, by the absence of any party organization which would have made the responsibility of Ministers to the Council effective; and, thirdly, by lack of funds. The fair measure of success in the working of dyarchy which was achieved was due partly to the moderation of the Council and partly to the efforts made to work the scheme by the Members of Government and the permanent services.

Working of
reforms in
C P.

"Fair
measure"
of
success" of
Dyarchy

The basis of the reforms was the gradual training of the electorates by the exercise of responsibilities proportionate to their capacity for the time being. The political education of the electorate must be a slow and difficult process, and in the Central Provinces the education given to it during the first Council was very small indeed. At the second general election Swaraj was put before the electorate as a vague millennium. . . . For the local Legislature the franchise covers about 1.1 per cent. of the total population, most of them illiterate. A period of four years is far too short a time in which to expect the growth of political ideas in an electorate so handicapped by illiteracy and general lack of the political sense as that of the Central Provinces. . . .

Franchise

20. . . . The Governor in Council sums up the difficulty of working the constitution as due, firstly, to the existence of a section of public men, considerable enough in numbers and ability to influence the Council, which is actively hostile to the present constitution and declines to work it; and secondly, to the

Working of
reforms in
Assam

**Two
difficulties**

financial difficulties which have precluded the Local Government from undertaking any activities other than carrying on the essential administrative functions on pre-existing lines. The Ministers have thus no convincing answer to the cry of their opponents that the reforms have bestowed no benefits on the electors.

* * * *

**Recommen-
dations of
Indian
witnesses**

24. . . . Generally speaking most of the Indian witnesses before us have attacked the present constitution as having been found after trial to be unworkable and have advocated the immediate grant of provincial autonomy to the provinces and the introduction of a measure of responsibility in the Central Government. So far as the Central Government is concerned, a common form which the recommendations of the witnesses took was for the transfer to the administration of Ministers responsible to the legislature of all subjects, except (i) Political and Foreign relations; and (ii) Defence. . . .

**"Specific
allegations"
made by
Indian
witnesses
against
present
constitution**

25. The specific allegations against the present constitution and the manner in which it has been worked, which are contained in the evidence of the witnesses. . . . may perhaps be summarized as follows:—

(i) the failure to encourage joint deliberation between the reserved and transferred sides of the Provincial Governments;

(ii) the absence of joint responsibility of the Ministers;

(iii) the impinging of the administration of reserved upon the administration of transferred subjects, and *vice versa*;

(iv) the failure on the part of permanent officials to co-operate with the Ministers;

(v) the vesting of the control of the Finance Department in a Member of the reserved side of the Government, the control thus given to the reserved side over the Ministers and, generally speaking, the handicapping of the other departments by excessive financial control¹; and

¹ See S. Sinha, *Some Eminent Bihar Contemporaries*, Appendix. . . .

(vi) the failure of the constitution to vest real authority in the Ministers owing to the control of—

(a) the Governor; and

(b) the Government of India and the Secretary of State.

39. We have now completed our examination of the evidence produced before us to the effect that dyarchy has failed. It is clear that witnesses have frequently made this allegation with reference not to dyarchy itself and have been thinking not of the division of functions, which is the essential principle of dyarchy, but of other features of the constitution. Complete dyarchy was not in fact established. For complete dyarchy it would have been necessary to have established a complete vertical division of functions between the two halves of a Provincial Government, and to have endowed each half with a separate purse, with a separate permanent staff and with a separate legislature; in the same way as in a federal constitution, there is a corresponding horizontal division in these respects The partial dyarchy which was introduced is clearly a complex, confused system The existing constitution is working in most provinces, and it is giving a training in Parliamentary Government to the electorate and also to the members of the legislatures and to Indian Ministers. While the period during which the present constitution has been in force has been too short to enable a well-founded opinion as to its success to be formed the evidence before us is far from convincing that it has failed. If, recently, in some of the provinces, it has not achieved the expected measure of success, it is because it was not worked on the lines and in the spirit which was intended. We hold in fact that, except by some form of dualism, it was not possible to afford an equally valuable training towards responsible government in India and still to safeguard those conditions upon which government depends.

Complete
dyarchy
not
established

"Partial
dyarchy"
has not
failed.

II. Extracts from Minority Report of Reforms Enquiry Committee.

Dyarchy worked in a spirit of reasonableness during first three years

Dyarchy has failed.

Breakdown in Bengal and C. P.

Causes of failure of constitution

Chapter XII In our opinion, the system of Dyarchy was during the first three years everywhere worked in the Legislatures by men most of whom were professedly its friends and who generally speaking tried to work it in that spirit of reasonableness which is referred to by the majority of our colleagues, and it is no exaggeration to say—indeed this is also the testimony of several Local Governments—that generally a spirit of harmony and co-operation prevailed between the Legislature and the Executive, notwithstanding the fact that the atmosphere outside was for sometime markedly unfavourable. The Indian Ministers and Members of Executive Councils also, upon whom new opportunities of service were conferred, appear to us to have been, within the sphere of their executive duties, equally eager to work the constitution in the same spirit of reasonableness, and yet differing from the majority of our colleagues we have been forced to the conclusion that the present system has failed and in our opinion it is incapable of yielding better results in future. The system has been severely tested during the course of this year and its practical breakdown in two provinces, viz., Bengal and the Central Provinces as a result of the opinions of the majority of the members of the Councils of those two provinces who refuse to believe in the efficacy of Dyarchy, and the tension prevailing in the other Legislatures for similar reasons, point to the conclusion that the constitution requires being overhauled. It has failed in our opinion for several reasons: (1) There are the inherent defects of the constitution which though theoretically obvious at its inception have now been clearly shown by actual experience to exist. (2) The Minister's position has not been one of real responsibility. (3) While in a few provinces¹ the practice of effective joint deliberation between the two halves of the Government has been followed, in

¹ Only in Madras and Bengal. See *Report*, pp. 157-159.

several of them it has not been. (4) Excepting to a partial extent in Madras, almost everywhere else the Ministers have been dealt with individually by Governors and not on the footing of collective responsibility. (5) The close interconnection between the subjects of administration which have been divided into 'reserved' and 'transferred' has made it extremely difficult for Legislatures at times to make in practice a distinction between the two sections of the Government with the result that the policy and administration of the Reserved half of the Government have not infrequently been patent factors in determining the attitude of the Legislatures towards the Ministers and have also in our opinion prejudiced the growth and strength of parties in the Councils. (6) The Meston Award has crippled the resources of the provinces. It has been the corner stone of the entire financial system, and it has prevented Ministers from developing nation-building Departments to the extent which would have enabled them to produce any substantial results. (7) The defects of the Rules and the constitution and the working of the Finance Departments have put a severe strain on the system.

The criticism which the Montagu-Chelmsford Report made of the Congress-League Scheme¹ has been demonstrated to be true in actual experience of the defects of having an irremovable Executive with an elected majority in the Legislature as is the case in the Legislative Assembly under the present constitution

**Central
Government**

We think that the Bihar Government has correctly summed up the position in the provinces by saying that Dyarchy is working 'creakily' and 'minor remedies may cure a creak or two'

**Dyarchy
working
'creakily'**

¹ See *Indian Constitutional Documents*, Vol. II, pp. 296-298.

17. WORK OF CENTRAL LEGISLATURE UNDER ACT OF 1919.¹

Authority
of reformed
legislature
on legisla-
tion

Government
measures
rejection,
withdrawal,
certification

The legislative activities of the reformed Indian Legislature are illustrative not only of its attitude towards the practical requirements of the country and towards the proposals of the executive, but also of the problems which the new conditions have presented for solution and of the directions in which private members have considered amendment of the law to be necessary. Since 1921, when the Indian Legislature came into being, 199 Government measures have received its approval. Only five Government Bills were either rejected or withdrawn as a result of the hostile attitude of the Legislative Assembly and on only four occasions did the Governor-General have recourse to certification in order to secure necessary legislation. The five Bills with which Government was unable to proceed were not measures of great importance

* * * *

The Bills certified by the Governor-General were the Finance Acts of 1923 and 1924, the Indian States (Protection against Disaffection) Act, 1922, and the Bengal Criminal Law Amendment (Supplementary) Act, 1925

* * * *

. On all the occasions on which the power of certification has been used the Council of State has associated itself with the Governor-General by passing the Bill in question in the form recommended by him.

* * * *

'Discrimina-
ting support'
of legisla-
ture to
Government
measures

The conclusion is that the legislature has lent a discriminating support to the measures which Government in the ordinary course of administration found it necessary to propose, and has given a new prominence, whether because of its own prepossessions or because of India's awakening interest in fresh activities, to particular classes of legislation.

¹ Extracts from a Memorandum submitted by the Government of India to the Simon Commission.

In a legislature of which lawyers are so numerous and so influential an element non-official attempts at legislation are to be expected. The desire to be the author of a measure placed on the statute book is strong in many members' breasts. Individual members and not political parties have been responsible for most of the proposals now to be described. In all, 95 Bills have been introduced by private members, and their origin in forensic practice is indicated by the subjects with which they dealt. As many as 49 related to matters of civil law and 19 to matters connected with law and order. Only 7 dealt with social matters, which are an appropriate sphere of private member's legislation. In general, highly technical matters, except legal matters, were avoided by members, for they have no facilities for drawing up Bills of that nature and the proposals made were usually of limited scope.

The facilities afforded for legislation of this kind were not ungenerous. In the Assembly out of 405 sittings 308 were appropriated to Government business and 97 to non-official business. For non-official Bills 35 days were allotted. In the Council of State, where non-official resolutions and non-official Bills alike may be discussed on a non-official day, 157 days were appropriated to Government business and 101 to non-official business. These facilities were obviously adequate in a legislature which is lukewarm towards private members' Bills.

* * * *

Sixty-two Bills which private members proposed to introduce required the previous sanction¹ of the Governor-General. Sanction was accorded in 36 cases and withheld in 26 cases. The most frequent ground on which sanction was refused was that the proposed Bills sought to regulate provincial subjects

* * * *

The assent of the Governor-General has never been withheld from a Bill passed by both Chambers

¹ Section 67(2) of the Government of India Act.

**Power to
disallow
Acts not
used by
Governor-
General or
Crown**

of the Indian Legislature, nor has any such Bill been returned for reconsideration. No use has been made of the powers to refer a matter for decision to a joint sitting of both chambers. The power of the Crown to disallow Acts of the Indian Legislature has not been exercised.

**Authority of
Legislature
on finance**

In effect the statutory restrictions on the financial authority of the Assembly in the matter of supply have proved to be inelastic; on the other hand, its sphere of influence has steadily grown. The proportions of voted and non-voted expenditure are roughly equal.

**Conclusions
regarding
Finance
Bills**

The history of these Financial Bills¹ suggests several important general conclusions. First, they present a very potent instrument for controlling not only voted but non-voted expenditure. The Assembly has been able, in particular, to use this weapon to reduce Army expenditure. Secondly, agreement with the Executive Government has been secured when extraneous political questions were not at issue, and specially when the Assembly was single-minded in the pursuit of economy. Lastly, the Assembly has no power of initiative. It may refuse its assent to a demand or reduce it, but may not increase it or alter its destination. Similarly, rulings of the Presidents have established that it may not, even by way of amendment to the Finance Bill, impose taxation which the Governor-General in Council has not proposed. It is, however, open to question whether all such amendments do not come within the scope of Section 67(2)(a) of the Government of India Act, and if a new tax by way of substitution of a tax proposed in the Finance Bill or an increase of a tax so proposed were to be moved, the ruling of the President would be sought with reference to that provision of the Act if sanction had not already been

¹ The reference is to the Finance Bills of 1921, 1922, 1923, 1924, 1925, 1927. The Bill of 1928 was passed as it was introduced.

obtained to the moving of the amendment. In these respects the constitution has modelled itself on the lines of the House of Commons, but in one respect the Assembly is more zealous of its powers than that chamber is. It has never adopted the self-denying ordinance that the expenditure proposals of the Government should not be modified except in so far as such modifications are formally accepted by them.

So far this note has been concerned with matters on which the conclusions of the Chambers prevail unless authority placed by the constitution in other hands is brought into operation. It has been indicated that particular portions of the administration are in varying degrees removed from the legislative or financial authority of the Chambers. For instance the public debt of India may not, except with the previous sanction of the Governor-General, be made the subject of any measure in either Chamber, and its service is not subject to the vote of the Assembly. The Indian Legislature may not legislate for the public services, nor may supply for portions of these services be presented to the vote. The maintenance of the defence forces and the administration of foreign and political affairs are outside the scope of private member's legislation save with previous sanction which would not ordinarily be given and supply for them is appropriated by the Governor-General in Council. Expenditure classified as ecclesiastical is also non-votable.

'Portions of the administration are in varying degrees removed from the legislative or financial authority of the' Legislature.

But, besides this sphere of authority, there is a sphere of influence within which, chiefly by interpellation, resolution or motion or through Committees, the Chambers may bring effective pressure to bear on Government. To this influence the whole administration, with two abatements, is subject. The general abatement is that the Governor-General may disallow any resolution or motion for the adjournment on the ground that it cannot be moved without detriment to the public interest or that it relates to a matter which is not primarily the concern of the

How Legislature may bring effective pressure to bear on Government

**Subjects
excluded
from sphere
of Legisla-
ture**

Governor-General in Council. The particular exception is that the relation of the Governor-General or the Governor-General in Council with any foreign State or with an Indian State and the affairs and administration of an Indian Prince or Chief may not be made the subject of a question, a resolution or a motion to adjourn the House. It is important for present purposes to observe that the public debt, the Civil Services in India and defence, which have been removed from the legislative and financial control of the Legislative Chambers, have not been removed from any portion of their statutory influence exercised by the asking of questions and the moving of resolutions and the moving of a motion for the adjournment.

**Interpella-
tion**

The right of subjecting the representatives of Government to oral examination is one which is highly valued and freely used. In the Council of State during the last seven years notice of 3,173 questions has been given and 2,561 have actually been asked. The volume of questions has not varied appreciably in that period. But in the Legislative Assembly, the use of interpellation at once increased when the Swaraj Party entered the Chamber. The first Assembly asked steadily about thirteen to fourteen hundred questions each year; the second and third assemblies asked each year about twice that number. During seven years notice of 18,107 questions has been given and 14,842 have been put

**Policy of
Government
regarding
Interpella-
tion :**

**(1) Questions
regarding
Indian
States**

Objections on points of substance are taken much less freely by Government. On two matters, however, Government have been more strict. Objection has been taken as a matter of principle to questions affecting the relations of Indian States with the Governor-General in Council or the territories of the former. The rules impose an absolute prohibition on such questions and there is therefore a duty on Government to raise objections. The President is also advised to disallow questions regarding the exercise of powers vested in the Governor-General alone.

Objections regarding the substance of a question are most frequently due to its subject-matter being related to public affairs with which the Member of Government addressed is not officially connected or to a matter of administration for which he is not responsible. Members frequently desire to examine the Central Government on matters of purely provincial concern. The earlier practice of Government was to take objection to all questions relating to provincial subjects. But in 1924 the Assembly passed a resolution to the effect that all important questions or subjects over which the Governor-General in Council has superintendence, direction and control be answered by Government after obtaining the necessary information from the Provincial Governments. Government adhere to the principle that questions relating to provincial subjects should not be answered, but they have made this concession to the demand of the Assembly that disallowance of questions relating to provincial subjects (both reserved and transferred) is not recommended when the Government of India have knowledge of the details and they refer to matters of all-India interest.

(2) Questions regarding powers vested in Governor-General

(3) Questions regarding Provincial subjects

. . . . Interpellation has had a considerable success in affecting the action of Government. It influenced considerably the shape of reforms in cantonment administration, brought to light defects in electoral rules or practice, led to the promulgation of vigorous rules under the Mines Act for the safety of human life and induced Government to send a deputation of non-official members of the Assembly to visit the Andaman Islands¹. Questions urged with success the claims of Indian lads to be trained in the Royal Air Force, the grievances of pilgrims to Mecca, and the necessity for a special scrutiny of the Transfer of Property Act. It was as a result of questions in the Assembly that the position of the

Effect of Interpellation Government action

1 This deputation visited the Andamans in December, 1925, to see the conditions of the Mappilla convicts settled there.

Indian States with reference to conventions concluded on behalf of India was exhaustively examined. Finally, interpellations in the Assembly led to the attention of the local administrations being directed to religious and moral instruction in Government Schools, forced labour, the import and sale of artificial ghee, the adulteration of tea, the prescription of an objectionable book and such more particular matters as the revision of the regulations and the re-arrangement of judicial work in Ajmer-Marwara and the Radium Institute at Ranchi.

* * * *

**Non-official
resolutions**

Non-official resolutions are naturally much more numerous. They occupied the Council of State on 101 days and the Legislative Assembly on 62 days. Repetition of resolution makes it difficult to compute accurately the total number of which notice was given, but the numbers appear to exceed 500 for the Council of State and 5,000 for the Legislative Assembly. . . .

**Non-official
resolutions
disallowed
by Governor-General**

A resolution may be disallowed by the President on grounds of substance or of form, as in the case of questions. But the Governor-General has also a power of disallowance when a proposed resolution cannot be moved without detriment to the public interest or when it relates to a matter which is not primarily the concern of the Governor-General in Council. This power has been used on 31 occasions in the Council of State and 210 occasions in the Legislative Assembly. All but one of the resolutions disallowed in the Council of State were defective as relating to matters not primarily the concern of the Governor-General in Council. In the Legislative Assembly this defect was fatal to 160 resolutions and 50 were disallowed in the public interest. It has not been the practice of His Excellency to exercise strictly his discretionary power of disallowance on the ground of irrelevance to the central administration. It is recognised that even though the subject may be one with the administration of which a province is charged within its own area, yet the Government of India have a wider responsibility and debate upon

the general conditions of India should not be excluded in the central legislature. . . .

* * * *

The Presidents of the Chambers have disallowed 14 resolutions in the Council of State and 77 in the Legislative Assembly. The only numerous class of resolutions disallowed by a President is the 42 resolutions of which notice was given in the Legislative Assembly which related to foreign and Indian States. Government have almost invariably taken objection to resolutions relating to Indian States. On several occasions discussions on the relations of India with other Dominions and the Colonies have taken place even though such discussions tend to be detrimental to broader Imperial interests. These are matters on which public opinion is very strong. The remaining grounds on which Presidents passed orders of disallowance were matters of form, the defects usually being such as could not be cured after reference to the proposer.

Non-official
resolutions
disallowed
by Presidents
of Chambers

The subjects with which resolutions were concerned are so multifarious that comprehensive view can best be attained by considering the departments whose administration was brought under discussion, and by paying particular attention to the discussion of matters not under the full control of the legislature. The Department which has to meet the most numerous resolutions is the Home Department. . . . The resolutions affecting the Army Department began in 1921 with 15 resolutions arising out of the Esher Committee's report. . . . Resolutions regarding financial administration were not so numerous. . . . The Legislative Department were pressed to secure for India an adequate share of the indemnities and reparations to be obtained from Germany. . . . The most important resolutions on matters under the control of the Department of Education, Health and Lands related to the status of Indians overseas. . . . The Department of Industries and Labour were encouraged to proceed with Trade Unions legislation. . . . Non-official resolutions on commercial matters have not been numerous. . . .

Departments
affected by non-
official
resolutions

**Government
defeats on
non-official
resolutions**

Government have only once been defeated on a resolution in the Council of State. The Legislative Assembly, however, has been less amenable to the arguments of Government speakers. It has divided on 91 occasions on resolutions, and has reached a decision favourable to Government on 51 occasions and unfavourable on 40 occasions.

**Effect of
non-official
resolutions
on Govern-
ment action**

... Government have given full effect to 37 and part effect to 36 non-official resolutions passed in the Assembly. The corresponding figures for the Council of State are 32 and 24.

In 32 cases, however, in the Assembly and 19 cases in the Council of State Government have found themselves unable to give effect to resolutions...

18. RELATIONS BETWEEN CENTRAL AND PROVINCIAL GOVERNMENTS UNDER ACT OF 1919¹.

**Government
of India Act,
Section 33**

... The most important of these relations (between the Government of India and the Provincial Governments) are those arising from the general superintendence, direction and control of the civil and military government of India vested by statute in the Governor-General in Council. But in actual administration the occasions of contact between the central and provincial Governments were due in a great majority of cases to other causes.

**Devolution
Act**

In the first place, there is a large number of enactments where powers are reserved to the Governor-General in Council, or are exercised by local Governments or authorities, subject to his sanction or control. In 1920, as a preliminary to the introduction of the reforms, the whole statute book was examined and a Devolution Act was passed in order to remove as many as possible of the prescriptions requiring the sanction of the Governor-General in Council, or maintaining his control. Local Govern-

¹ Extracts from a Memorandum submitted by the Government of India to the Simon Commission.

ments, so far as is consistent with the due exercise by the Government of India of the powers necessary for the maintenance and discharge of their own responsibilities, were set free from the supervision and control of the Government of India. But there are still 91 Acts of the Governor-General in Council, 36 regulations made by the Governor-General, and in each province a varying number of local enactments which require the proposals of the local Government on certain matters to be submitted to the Government of India for sanction. It is sufficient to note that although references by local Governments under these enactments to the Government of India have been constant, yet there has been no representation that the Devolution Act was an inadequate or ungenerous measure, and no arguments for its amplification were addressed to the Reforms Enquiry Committee of 1924.

Cases where proposals of Local Governments require sanction of Government of India

In the second place, the Government of India Act, and rules or orders under it, require local Governments to obtain in certain circumstances the sanction of the higher authorities. The particular instance of previous sanction to the introduction of proposed provincial legislation is a matter of the exercise of the powers of the Governor-General and not of the Government of India. . . . Otherwise the relations of the Government of India with provincial Governments arising out of specific provisions of the Act and rules have been concerned preponderatingly with service and financial questions. In these matters, and particularly in regard to expenditure sanctions, the orders required were usually those of the Secretary of State. The Government of India has exercised mostly functions of consultation and criticism. In service matters the need for such references has recently been greatly reduced by the promulgation of rules delegating to local Governments complete authority over provincial and subordinate services and special officers. In financial matters, the Meston settlement has been a constant source of dissatisfaction to certain provinces, and no satisfactory means has yet

Previous sanction of Governor-General to provincial legislation

Control of Government of India over Services and finance

been devised of securing adequate control by the Government of India, combined with a due freedom in provincial Governments, over capital expenditure on large public works. The alienation of lands other than land for industrial purposes and land revenue by provincial Governments is restrained by executive orders of the Government of India and has given occasion for discussion with various provinces.

Conflicts of jurisdiction between Centre and Provinces

In the third place, not infrequent discussions between the central and local Governments have been concerned with conflicts of jurisdiction or interpretation of particular provisions in the constitution. It has been necessary for the Secretary of State to prescribe rules to regulate the transfer of State lands and buildings between the Government of India and local Governments. Excise administration by Ministers in provinces has at times seemed to conflict with the central administration of tariffs and customs. The levy of terminal taxes by local Governments, more freely and extensively than could have been apprehended, has seemed at times to threaten the best interests of the commerce of the country as a whole, and indeed, where differentiation between Indian and foreign goods has been attempted, to indicate a weakness in the position of the Government of India in regard to commercial treaties. So much so, that the Taxation Enquiry Committee has recommended the formulation of general principles and the statutory conferment on the Government of India of powers to control the imposition of such taxes.

Attempts of Provincial Governments to relieve their finance at the cost of Government of India.

Analogous to these cases are the numerous cases in which it was sought to interpret the classification of subjects as provincial or central so as to relieve provincial finance and cast the burden on to central revenues. In the beginning of the Reforms era some of the Provincial Governments busied themselves in trying to discover instances of services rendered to the Central Government and making claims for remuneration for them. Others were driven by financial stringency into strained interpretations of the proper classification of charges as central or pro-

vincial, even though the amounts at stake were small, or to take action which would affect central finances unfavourably. Claims have been made for reductions of the provincial contributions, for a greater share in income-tax and for the export duty on jute. Controversies of this nature were bound to arise in any constitution which proceeded from a delimitation of fields of administration, and therefore offered a scope for difference of interpretation in detailed practice. But claims of this kind have happily become less frequent, not only through exhaustion of major matters of dispute, but chiefly because of friendly agreement on broad principles in annual conferences of Finance Members.

Finally, the Government of India has acted as the friendly co-ordinator of provincial activities. Conferences on matters such as Education, Jail Administration and Police work have enabled provincial administrations to conduct their own affairs with acquaintance of the experiences and interests of their fellows.

Government of India as "friendly co-ordinator of provincial activities"

The general powers of superintendence, direction and control by the Government of India over Provincial administration vary widely according as the subjects are reserved or transferred. In the latter case, the statutory restrictions on the exercise of these powers have the practical effect of permitting only their occasional use, and it has been in service matters, where the administration of a central subject is concerned, that interference has been practised. When the Punjab Government proposed to prohibit the import into that province of foreign liquor the Government of India did not feel justified on a strict interpretation of the provisions of Rule 49 of the Devolution Rules in cancelling the order in the exercise of their powers for the purpose of safeguarding the administration of the central subject of Customs. Again no interference appeared to be justified when allegations were made of very serious deterioration of certain main roads. In short, central control of transferred provincial administration has been exceedingly rare.

Control of Government of India on Provincial Transferred Subjects

**Control of
Government
of India on
Provincial
Reserved
Subjects****Land
revenue****Police,
Jails, etc.**

Over the administration of reserved subjects the intention of the constitution is that control should be normal and constant, but in the absence of definition of its scope it has fallen to the Government of India to arrive itself at a settled practice. The general principle observed has been to grant to the provinces as free a hand as possible in the various spheres of provincial administration and the accepted policy of the Government of India in the matter is to confine their attention as far as practicable to the consideration of such aspects only of provincial subjects as affect general policy or general interests. The pursuit of this policy has naturally had different results in different spheres of administration. For instance, the provincial administration of land revenue has been controlled by the Government of India mainly with a view to regulation of alienation of land and land revenue and to restrictions on deviations from accepted principles of assessment, whether these deviations manifest themselves in fixing unusual percentages of net assets as the amount to be taken as land revenue, in prescribing unduly long periods of settlement or in giving Legislative Councils a voice in determining rates of assessment. On the other hand, superintendence of matters with the administration of which the Government of India in the Home Department is concerned has gone into detail of a wider range. The attention of local Governments has, for instance, been directed to the possible effects of reductions in the Police force, the state of crime generally, delays in the disposal of criminal cases, the conditions of jail accommodation and jail discipline and administration, and the use of whipping as a jail punishment. Instructions have been issued to provincial Governments regarding the treatment of certain classes of prisoners in jails and in the matter of the censorship of cinemas and model regulations for the provincial councils under the electoral rules have been circulated. From time to time the Government of India have directed the prosecution of certain persons for political offences. The consideration in these cases has been whether the prosecutions

were of all-India importance or of importance to more provinces than one. Local Governments, however, remain competent to prosecute individuals on their own initiative whenever they consider it desirable.

That the Government of India have not exercised their powers of superintendence so as to restrict unduly the freedom of provincial Governments will be apparent from the means by which they inform themselves of matters under their control. In pre-reform days the Government of India exercised control over the Provincial Governments through the agency of the touring headquarters experts. The time when that was possible has gone by. The Inspector-General of Forests still makes inspections but his role is primarily to advise provincial Governments and the Government of India on the management of State forest property. The post of the Inspector-General of Irrigation has been abolished and the Government of India have appointed a Consulting Engineer of the standing of a Junior Chief Engineer who advises them on technical matters. A Central Board of Irrigation has also been constituted, consisting of the Provincial Chief Engineers for Irrigation and the Consulting Engineer to the Government of India, to advise local Governments as well as the Central Government on difficult technical matters which may be referred to it, such for example as important irrigation projects under preparation, or a dispute between two local Governments or between a local Government and an Indian State. The Government of India, therefore, move in the direction of superintendence, direction and control on receipt of the periodical reports of the administration or of special reports the submission of which is governed by orders of 1899. Only in regard to legislation have the Government of India taken steps to enable themselves to control the new powers of the provincial Governments. The decision whether a Bill is of substantial importance within the meaning of the instructions is left to the local Government and in the vast majority of cases in which Bills are submitted the Govern-

Machinery
used by
Government
of India to
collect in-
formation
on Provin-
cial matters]

Government of India and Provincial legislation ment of India do not in fact interfere at all. The requirement is imposed only with a view to the Government of India making observations or, in the last resort, issuing orders, if so advised.

General policy of Government of India is non-interference. The inclination of administrative departments of the Government of India generally is to be chary of exercising over provincial administration the powers which they undoubtedly possess. Where interference is found necessary, criticisms are generally tendered in the form of advice and the issue of direct orders is avoided. The fact appears to be that no detailed definitions of the appropriate exercise of these powers have been reached in the several departments of the Central Government. The essential subject of law and order is more closely controlled than others, but

Law and order

otherwise the tendency is to err, if at all, in the direction of provincial freedom. In one important particular, however, the intention of the constitution has been clearly expounded. It has been established that, unless the Act and Rules specifically declare a contrary intention, the powers exercised by a provincial Governor, as distinct from the Governor in Council, are subject to the superintendence, direction and control of the Governor-General in Council.

Powers of Governor

'Agency' functions of Local Governments

As regards the relations of local Governments as agents of the Central Government for the administration of central subjects, it is necessary to mention only two points of some constitutional importance and one curious anomaly in administrative arrangements. Certain Indian States have not been taken under the control of the Governor-General in Council. The practice has been to appoint Governors of provinces in their personal capacity as Agents to the Governor-General for the administration of relations with these States. It is now established that such an appointment is constitutionally inappropriate and that in future the agency of the Governor in Council should be used for the purpose in question. Similarly, cases have arisen in which it was desired to use the agency of the Minister in charge of a transferred department. The rules, however, provide only for the employment of the agency of the Governor in

Indian States

Council and in these cases the relations of the Minister and the Government of India are not those of agent and principal, but of parties to a business arrangement. Thus the Central Government, which has no public works establishment of its own for carrying out works in provinces, depends almost entirely on assistance from transferred departments of local Governments. The local Government cannot be required to afford this assistance, and if it does so, it is not subject to the superintendence, direction and control of the Government of India and it may fix its own charges. Indeed, local Governments have on occasions declined to undertake agency work of certain kinds. **Public Works**

In other respects, agency relations have occasioned no difficulties. But there remains the anomalous position in regard to the administration of shipping and navigation, major ports and lighthouses. **Shipping, ports, etc.** These are central subjects, but powers concerning them are almost entirely vested in the local Governments by provincial or Indian statutes. The result has been a lack of uniformity in administration from province to province in the framing of rules, the issue of certificates and the rates of fees—matters which have an international bearing. This anomalous position appears to have been due to a failure to pass an Act, the converse to the Devolution Act, by which the powers vested in the local Governments might have been restored to the Government of India. Methods of putting the whole administration of these subjects on a proper footing have been considered, and a beginning has been made with lighthouse administration for which legislation has just been enacted by the Indian Legislature.

19. RELATIONS OF GOVERNMENT OF INDIA WITH SECRETARY OF STATE UNDER ACT OF 1919¹.

The relations of the Government of India with the Secretary of State in Council group themselves

¹ Extracts from a Memorandum submitted by the Government of India to the Simon Commission.

most conveniently round the particular powers which the Government of India Act has reserved to the Secretary of State, his control of the expenditure of the revenues of India in British India, and his general powers of superintendence, direction and control.

**Control of
Secretary of
State over
Services**

✓ In the first category fall a large number of powers of which many, such as the power to sanction the appointment of a Deputy Governor, have never been used. But it also includes the powers to make rules for regulating the classification of the civil services in India, the methods of their recruitment, their conditions of service, pay and allowances and discipline and conduct. These powers are now in process of partial delegation to authorities in India. Meanwhile their exercise has necessitated a constant stream of correspondence between India and England and occasioned not infrequent difference of opinion. The Secretary of State in Council has always emphasised his guardianship of the official services, and he has accordingly exercised over the Government of India a control varying from general questions of service conditions to orders in regard to the particular circumstances of individual officers which by rule involve reference to him. His powers in this regard have been more particularly defined in various sets of rules, such as the Fundamental Rules. But, whatever the volume of this business, it is not of prime importance for the present account, for it was, under other conditions, a feature of pre-reforms administration, and, seeing that the Indian Legislature has no power over conditions of service, it does not arise from the cardinal change in the Government of India, namely, the independence and authority of the Legislative Chambers.

**Control of
Secretary of
State over
finance**

It is otherwise in the case of financial control. The Act of 1919 in the manner of earlier Acts made the control of the Secretary of State over expenditure in British India "subject to the provisions of the Act and rules made thereunder" and one of these provisions introduced a new controlling authority over expenditure, by laying down, albeit with two well-

known qualifications, that the proposals of the Governor-General for the appropriation of funds shall be submitted to vote of the Legislative Assembly. This change and the practical difficulty in scrutinising the great mass of the expenditure of the Government of India rendered it necessary to delegate large powers of initiative to the Government of India. The rules regarding expenditure sanctions have, therefore, been relaxed so as to require the previous sanction of the Secretary of State in Council in only a limited class of cases. There is, however, the general understanding that plans involving important questions of policy should not be initiated without consultation with him. Nevertheless, the theoretical position is clear. The Secretary of State remains in law responsible to Parliament for all expenditure from Indian public funds. Accordingly, control from home over administration in the Finance Department of the Government of India is closer than that over almost any other class of administration, except perhaps defence, foreign relations and the conditions of service under the Crown. The budget proposals of the Government of India and particularly those affecting taxation must be referred to the Secretary of State in the first instance and approved by him before the budget is presented to the legislature. He also controls ways and means operations, sales of Council Bills, the management of the Gold Standard and Paper Currency reserves, the policy with regard to exchange and currency, and all borrowing operations in London.

Growing
initiative of
Government
of India

Control of
Secretary of
State over
Budget,
Currency,
Public
Debt, etc.

The control of the Secretary of State on matters of Railway administration is in the main financial, but it is illustrative of three categories suggested at the beginning of this paragraph, for the particular statutory powers of the Secretary of State include powers to restrict the making of contracts, and all questions of general railway policy are controlled by the Secretary of State under his general powers of superintendence. The accepted policy of managing Railways on commercial lines and the growing interest

Control of
Secretary of
State over
Railways

Some illustrative cases where Government of India cannot act without previous sanction of Secretary of State

and influence of the legislative chambers in Railway matters impose practical restrictions on the interference of the Secretary of State. In practice he is concerned only with the very broadest questions of administration, organisation and finance. Thus when the construction of a new line is proposed, the Secretary of State's approval is required if the estimated cost chargeable either to capital or to revenue exceeds $1\frac{1}{2}$ crores of rupees, or if an objection is raised by an authority working a Railway to which the new line will be connected or of which the interests will be affected by the new line. Without the sanction of the Secretary of State the Government of India may not start open line works when the estimated capital cost of the new work or the group of works forming one project exceeds $1\frac{1}{2}$ crores of rupees. All proposals for the purchase of any portion of a Railway belonging to a Company of English domicile or the sale of any portion of a State Railway require the sanction of the Secretary of State. When the purchase price of any branch line belonging to a Company of Indian domicile exceeds $1\frac{1}{2}$ crores of rupees or the amount payable under the contract with the Company, whichever is less, the sanction of the Secretary of State is required. When disputes arise out of the terms of contract executed in England with Companies of English domicile, the Secretary of State's sanction is necessary to their reference to arbitration. If any suggested abandonment of Railway revenues raises an important question of policy, the Secretary of State requires reference to himself before action is taken.

Secretary of State's general
supervendence,
direction
and control

In the matters described in the preceding paragraph it is not always clear whether the control exercised by the Secretary of State is based on particular or general powers, nor is it in practice necessary that the source of his authority should be indicated. But there are many matters in which the action of the Secretary of State is clearly an exercise of general superintendence, direction and control. His powers of this nature are still unrestricted by either rule or

convention, for no action has been taken on the suggestion by the Joint Select Committee of a convention that the Secretary of State should not ordinarily dissent from concurrent conclusions of the Government of India and the Legislative Assembly on matters of purely Indian interest, or on a similar suggestion by the Reforms Enquiry Committee. (The Secretary of State in Council retains very considerable powers. In particular he is absolutely responsible to the Parliament for the maintenance of peace or order in India, and Imperial control over India's foreign and military affairs is unrelaxed. In certain cases the Secretary of State has by executive order insisted on being placed in a position to exercise control, if so advised. Thus his concurrence must be obtained before the Governor-General refuses statutory previous sanction to the whole or a substantial part of a provincial Bill which a local Government desires to introduce and before the Governor-General in Council requires a local Government by executive order to refrain from proceeding with a provincial Bill which does not require statutory sanction. Again, the Secretary of State is content that only certain classes of official Bills should be reported for his approval before introduction, although the pre-reforms practice was to obtain his previous approval in principle to all projects for legislation. The more important of these classes include Bills which include Imperial or Military affairs or foreign relations, affect the rights of European British subjects or the law of naturalisation, concern the public debt or customs, currency and shipping, or interfere with provincial legislation. But generally the sphere within which the Secretary of State may wish to exercise his powers of superintendence, direction and control is a matter of understanding rather than precise definition. Broad general questions are invariably referred to him, and new departures of any importance in purely administrative matters are brought to his notice. At the same time the Secretary of State is not restricted in the initiation of his control. He has, for instance, *son motu*, drawn

Secretary of State "retains very considerable powers".

Initiative of Secretary of State

attention to overcrowding in Indian jails, and to official criticisms of observations made in a Legislative Council by a non-official member. But except in certain financial questions the initiative of the Secretary of State has never been pushed to the extent of reducing the Government of India to the position of a mere subordinate agency, and it is probably true to say that in matters of finance there has been on the whole a tendency as time goes on for his control to be gradually relaxed.

Control of
Secretary of
State over
Army
matters

In Army matters the position is somewhat different. His Majesty's Government maintain a larger army than they would maintain but for the necessity of defending India, and they are under a constant liability to reinforce India with troops in the event of an emergency. The question of the strength of the Army in India is thus an Imperial question not because it is proposed to use the Army in India for the general defence of the Empire but because it may be necessary at any moment to use the Imperial Army for the defence of India. In those matters the superintendence, direction and control of the Secretary of State has, therefore, been more close, action has been taken more freely on the initiation of the Secretary of State and the recommendations of the Government of India have been more independently considered and on occasions overruled.)

Control of
Secretary of
State over
Governor-
General

Finally, it has been established that the control of the Secretary of State extends to the exercise by the Governor-General of powers vested in him, apart from his Council, unless the Act clearly indicates a contrary intention./

20. THE GOVERNMENT OF INDIA ON COMMUNAL ELECTORATES UNDER ACT OF 1919¹.

Terms of
reference
of Franchise
Committee

The problem of communal electorates was expressly mentioned in the terms of reference to the Franchise Committee who were required *inter alia* to advise:—

¹ Extracts from a Memorandum submitted by the Government of India to the Simon Commission.

how far representation can be adequately and effectively secured by territorial electorates, or where circumstances seem to require it in order to secure adequate representation of minorities, of special interests or of backward classes by (i) special or communal electorates; or (ii) reserving elective seats for special classes in plural constituencies, or (iii) nomination in such measure as the exigencies of fair and adequate representation entail; or (iv) other expedients, for instance proportional representation, etc.

It is no part of this note to examine the extent to which the Franchise Committee succeeded in proposing an electorate, based not upon interests, but measuring "the number of persons who can be reasonably entrusted with the duties of citizenship", but the Committee in paragraph 10 of its report came to an early decision that there should be "the same qualification for all communities within the same area, although this will enfranchise a smaller proportion of Muslims than of non-Muslims". Muslim representation then was to be secured not by separate electorates, with different franchise qualifications, but by a separate register prepared from the same general body of electors for separate Muslim constituencies; for in considering the problem of communal representation the Committee decided (paragraph 15) not merely that Muslims must have separate representation in all provinces (Burma was not under discussion), but (paragraph 16) that there should also be separate communal representation for Sikhs in the Punjab, (as recommended by the Joint Authors), together with (paragraph 17) communal representation for Indian Christians in Madras; for Europeans in Madras, Bombay, Bengal, the United Provinces and Bihar and Orissa; and for Anglo-Indians in Madras and Bengal. . . .

Recommendations of Franchise Committee

* * * *

With regard to the proportion of Muslim seats, the Committee felt themselves bound by the terms of the Lucknow Pact, and gave their reasons in the following terms:—

**Reasons for
acceptance
of Lucknow
Pact by
Franchise
Committee**

"The great majority of Indian witnesses and the representatives of associations, political and non-political alike, not excluding those in which Hindu interests preponderate, adhered to this compact, and it seems to us that any departure from its terms would revive in an aggravated form a controversy which it has done much to compose. In the provinces of Bombay, Bengal, the United Provinces, the Punjab and Bihar and Orissa, the local Governments recommended us to adhere to the compact whilst the Madras Government provided in the first of its alternative schemes approximately the proportion of Muslim representation which the compact fixed. In the interests of India as a whole, we have, therefore, felt ourselves amply justified in accepting the compact as a guide in allocating the proportion of Muslim representation in the Councils."

The Committee recommended separate communal seats for Muslims, Sikhs and European Commerce in the Assembly, and for Muslims and Sikhs in the Council of State. The formation of the Council of State was subsequently wholly changed on the recommendation of the Joint Select Committee of Parliament and the proposals of the Franchise Committee for indirect election to both bodies were set aside. The detailed recommendations of the Franchise Committee on this subject need not, therefore, be examined in this note.

**Recommendations
of Franchise
Committee
accepted by
Government
of India**

Having accepted the recommendations of the Franchise Committee that separate communal representation must be retained for Muslims and extended in certain provinces to other minority communities, the Government of India then proceeded to discuss the number of seats to be given to the Muslims. They noted that the local Governments had not been unanimous in subscribing to the Lucknow Compact as giving a guide according to which the proportion of representation should be fixed. . . .

The Government of India were of opinion that the proportion laid down in the Lucknow Pact could not be taken to represent the right relation either between Muslims in different provinces or between Muslims and the rest of the communities.

Government
of India not
in favour of
Lucknow
Pact

The Government of India then proceeded to suggest certain considerations which they would themselves have borne in mind, had they possessed an entirely free hand to establish a ratio of Muslim seats which would bear a closer relation with their strength as a community, while at the same time fulfilling undertakings given to Muslims to safeguard them as a minority. The considerations which the Government of India stated that they would necessarily take into account were five in number—

(1) The Muslims had been definitely promised some electoral advantages on the ground of their political importance.

"Considerations taken into account" by Government of India

(2) The Muslims are the poorer community and, therefore, any property qualification common to them and the Hindus would make the Muslim electorates smaller in proportion to the Muslim census than would be the case with the Hindus.

(3) The census strength of the Muslims does not correspond to their political strength. In Bengal and Assam the Muslims are politically weaker than their numbers would indicate, while in the United Provinces with 14 per cent. of the population they are incomparably stronger than in Bihar and Orissa with 10.5 per cent.

(4) Though a majority can always impose its will upon a minority, the effectiveness of a minority depends upon its being large enough to have the sense of not being entirely overwhelmed.

(5) Whatever advantage is given to the Muslims is taken away from some other interest or interests.

The Government of India concluded that these considerations would suggest a system of weightage leading to very different results from those agreed

Franchise
Committee's
plan accep-
ted by
Government
of India,
except in
case of
Bengal

upon at Lucknow; they took the view, however, that the Congress-League compact was an accomplished fact and a landmark in Indian politics which they could not possibly ignore; they felt, therefore, like Lord Southborough's Committee, that whatever the defects of the compromise it was not one that they ought to re-open. They, therefore, accepted the conclusions of the Committee in favour of the proportions agreed upon in the Lucknow Pact with one exception. The Government of India felt that the Muslim representation proposed for Bengal was manifestly insufficient; they doubted whether the claims of the Muslim population of Eastern Bengal had been adequately pressed when the Congress-League Pact was in the making. They recommended, therefore, that the Bengal Muslims should be allotted 44 seats instead of 34 and left it for further consideration whether the addition should be obtained by enlarging the Council or by withdrawing seats from other interests or by a combination of both plans. . . .

* * * *

Differences
between
Franchise
Committee
and
Government
of India
regarding
Muslim
seats in
Central
Legislature

There were some differences between the Government of India and the Franchise Committee on the extent of communal representation in the Central Legislature. The Committee had applied the Congress-League compact which related to the Indian Legislature as a whole to the Assembly as a unit by itself, and recommended 24 Muslim seats out of 73 Indian elected seats; the Government of India based their proposals on Muslim strength in the different provinces and suggested 12 Muslim seats out of 69 Indian elected seats. The Government of India were, however, prepared to accept the Committee's proposals, with one dissident who thought the Muslim representation excessive. In the opinion of the Government of India the Committee had unduly restricted European representation on the Assembly; they reserved their opinion on that point. With regard to the Council of State, after opposing the Committee's suggestions for the form in which it should be elected, the Government of India stated that they did not attach the same weight as the Com-

mittee had done to the need for nicely adjusting the claims of the provinces and the communities; their aim was the representation of all important interests on a broad scale, and nomination would be used to adjust inequalities in communal representation.

We can now turn to the recommendations of the Joint Select Committee of Parliament, noting at once that contrary to the recommendations of the Franchise Committee the Select Committee required direct election to both chambers of the Indian Legislature and also insisted upon the constitution of the Council of State as "a true second Chamber". The Select Committee avoided entering into any discussion of the arguments for or against communal electorates, but differing from the Government of India they accepted "the recommendations of the Franchise Committee in respect of the proportionate representation of Muslims based on the Lucknow Pact". . . .

Recom-
mendations
of Joint
Select
Committee

* * * *

In the meantime the Government of India were engaged in revising the recommendations made in their Fifth Reforms Despatch on the lines indicated by the Joint Select Committee of Parliament. Local Governments were consulted and revised schemes for the constitution of the Indian and Provincial Legislatures were submitted to the Secretary of State early in 1920. For the Legislative Assembly out of 108 elected seats (including one technically nominated seat to be filled by nomination as the result of an election held in Berar) the Government of India recommended 30 seats for Muslims, 2 for Sikhs and 9 for Europeans. In the Council of State, out of 32 elected members, the Government of India recommended 10 seats for Muslims and 1 for Sikhs. In addition (by the representation of commercial interests) 3 seats were reserved for Europeans. In submitting their proposals to the Secretary of State, the Government of India observed with reference to the distribution of seats in the Legislative Assembly that any scheme of distribution had to satisfy two exacting conditions; it must secure to each province its fair share of the total representation, and it must provide

Revised
recom-
mendations
of Govern-
ment of
India
regarding
communal
distribu-
tion of
seats in
Central
Legislature

for Muslim representation on the lines of the Lucknow Pact. It was found impossible consistently with these conditions to distribute the general and Muslim seats in each province in strict accordance with the proportions adopted in the case of provincial Legislative Councils,

* * * *

**Revised
recommendations of
Government of India
regarding Muslim
seats in
Provincial
Councils**

In the revised proposals submitted by the Government of India for carrying out the recommendations of the Joint Select Committee of Parliament with regard to the constitution of the provincial Legislative Councils, effect was given to the injunction of the Joint Committee that the proposals of the Franchise Committee in respect to the proportional representation of Muslims based on the Lucknow compact should be accepted. An exception was, however, made in the case of the Punjab Legislative Council for which the Government of India proposed to fix the percentage of Muslim seats on the basis of the territorial seats only without including the non-territorial special constituencies in the calculation. The Government of India observed that as the Muslims in the Punjab formed more than half the population it seemed reasonable to assume that they would secure their fair share of the latter seats. The adoption of the Lucknow compact had given rise to claims by the Sikhs which the Government of India were unable to accept, but which were undoubtedly regarded by the Sikh community as warranted by the concessions accorded to the Muslims. The claim put forward and persistently pressed by the Sikhs both in representations to the local Government and to the Government of India was for one-third of the total number of elected seats in the Punjab Legislative Council. The proposal of the local Government on the other hand was that the Sikhs who constituted 10.7 per cent. of the provincial population should be allotted 10 out of 58 elected seats or, in other words, 17 per cent. which gave them as much as was consistent with the just treatment of the Hindus who formed 34 per cent. of the population. In order to satisfy the claims of the Sikhs it would have been

**Case of the
Punjab
Muslims**

**Claims of
the Sikhs**

necessary either to revise the Lucknow Pact in relation to the Punjab or to commit injustice to the Hindus; for that reason the Government of India did not support any addition to the 10 seats recommended by the local Government.

* * * *

In its sessions held in 1924, 1925 and 1926 the All-India Muslim League continued to emphasise its adherence to separate representation for Muslims and in moving his resolution on the subject in the All-India Muslim League held in December 1926, Mr. Jinnah said:

"... There is no escaping from the fact that communalism does exist in this country. By mere time and sentiment it could not be removed. Nationalism could not be created by having a mixed electorate."

Throughout 1926, which was the year of the serious communal riots in Calcutta, a movement against communal electorates, certainly among Hindus, began to gather increased weight. Communal electorates were stated in short to be the root-cause of the dissension between the two communities. Fears that Government might yield to the agitation which had been started for the abolition of the system led Muslims to seek an assurance that no change was contemplated at the time. This assurance was publicly given by His Excellency in a speech at the Chelmsford Club in August 1926 in which, after appealing to the communities to come to terms, he stated that the problem of communal representation was one which would naturally fall within the purview of the Statutory Commission, and the Government did not intend to take any steps either to curtail or extend the system in advance of the inquiry which the Commission would make. Shortly after, in replying to an address presented by Muslims at Poona, His Excellency stated...

"... The question of communal representation about which you have expressed anxiety is of great complexity. I have said elsewhere its only justifica-

Muslim
League
demand for
separate
electorate

Hindu
agitation for
abolition of
separate
electorate

Viceroy's
pledge to
Muslims

tion is that it should be the means through which every community should feel free to give what it can to the common cause of the service of India. But if this ultimate purpose is obscured and if communal representation comes to be regarded as an end in itself, then it has the effect of narrowing the horizon of our loyalty. What was designed to promote the cause of unity may quickly become the seed-bed of division when different communities have to live together. It is incumbent upon each to recognise that the cause of peace demands a wide measure of mutual toleration and restraint. That which we claim for ourselves we must be ready to accord to our neighbours. This spirit, if it may but grow, will be found to be a better and more lasting solvent for the present discords than any artificial methods of representation, but until we can reach this state communal representation in some form is likely to be necessary and it is probable that a substantial modification of it must largely depend upon the general consent of all communities."

Lord
Birkenhead
on
communal
electorate

The subject of communal representation had been referred to by the Secretary of State in a speech delivered in the House of Lords on the 28th of July, 1926 It was doubtless true, said Lord Birkenhead, that the system of communal representation tends to stereotype cleavage, but there is not the slightest ground for an assertion that, had Parliament insisted in the teeth of violent opposition in carrying reforms in 1919, which embodied such representation, Hindu-Muslim relations would have become more amicable than lately they have been. On the other had it was almost certain that they would have become very much more violent and embittered.

* During the course of that debate¹ no Muslim member had expressed the view that the time had yet come when communal electorates could be dis-

¹ The debate on Sir Sankaran Nair's resolution in the Council of State (March, 1927) in favour of abolition of communal electorates.

pensed with. In the circumstances there was some surprise when a statement was issued to the press a few days later by a number of Muslim members of the legislature to the effect that at an informal conference which they had held among themselves they had agreed to the institution of joint electorates, on the condition that Sind should be separated from the Bombay Presidency and made a separate province and secondly, that reforms should be introduced in the North-West Frontier Province and Baluchistan on the same terms as in any other province of India. If these conditions were accepted by the Hindu-Muslim communities Muslims would accept joint electorates in all provinces, and would make to the Hindu minorities in the provinces where Hindus were in a minority the same concessions that the Hindus were prepared to make to Muslim minorities elsewhere. In the Punjab and Bengal representation should be on the basis of population and in the Indian Legislature Muslims should be represented by not less than one-third of the members chosen by mixed electorates. Immediately after the statement containing these conditions had been communicated to the press some of those who had been present at the conference wrote to the news-papers denying that they had agreed to the conditions and saying that they could not accept joint electorates on any terms. Mr. Jinnah who had taken a leading part in convening the conference himself issued a further statement to the press in which he said that the Muslim proposals must be accepted or rejected *in toto*; while about three weeks later the representative¹ in the Assembly of the North-West Frontier Province gave a statement to the press in which he said that if Muslims desired to preserve their identity, they should not allow themselves to be merged politically in the Hindu majority. He concluded by saying that a joint electorate would be an unequal combination disadvantageous to the weaker side. From comments made in the Muslim press throughout India it seemed clear that whatever the reception the Hindus

Delhi
Proposal
of March
1927.

Mr. Jinnah's
view

1 A 'representative' nominated by the Government.

might give to the conditions suggested at the conference of Muslim leaders there was little chance of their finding favour with Muslims generally.

Three days after the Muslim conference, the Hindu members of the Indian legislature met in Delhi to consider the Muslim proposals. At this meeting the following principles were generally accepted as the basis of further discussion:

Hindu reply
to Delhi
Proposals,
March, 1927

(1) There should be joint electorates for all the legislatures throughout India.

(2) Everywhere seats should be reserved on the basis of population.

(3) Religious and quasi-religious rights should be safeguarded by specific provisions in the constitution.

(4) Problems involving the rearrangement of the provincial boundaries should be left alone for the time being.

21. DEBATE ON NATIONAL DEMAND IN INDIAN LEGISLATIVE ASSEMBLY, 1924.

Resolution
for revision
of Consti-
tution 8

["On the 23rd September, 1921, a resolution was moved in the Legislative Assembly by Rai Jadu Nath Mozumdar Bahadur for the establishment of autonomy in the provinces and the introduction of responsibility in the Central Government At the end of the debate, Sir William Vincent (the then Home Member) suggested a formula which was finally adopted as an amended resolution. It ran thus: 'That this Assembly recommends to the Governor-General in Council that he should convey to the Secretary of State for India the view of this Assembly that the progress made by India on the path of responsible government warrants a re-examination and revision of the constitution at an earlier date than 1929'. This resolution was adopted by the Assembly without division. The Government of India submitted a report of this debate to the Secretary of State. On the 2nd November, 1922, the Secretary of State (Lord Peel) sent a despatch to the Government of India The Secretary of State was then apparently of the opinion that the possibilities of the new constitution had not been exhausted and he assigned three reasons against further amendment of the Government of India Act.

Lord Peel's
Despatch

1 See Legislative Assembly Debates, Vol. IV, Part I, pp. 221-222, 348-400, 518-582, 709-769.

The first reason was that progress was possible under the existing constitution. The second reason was that the merits and capabilities of the electorate had not been tested by time and experience. The third reason was that the new constitutional machinery had still to be tested by time and experience. On these grounds he refused to entertain the proposal for advance as contained in the resolution of the Assembly, referred to above. This despatch of the Secretary of State was followed by a resolution moved in the Assembly by Diwan Bahadur T. Rangachariar on the 22nd. February, 1923, expressing extreme dissatisfaction with it. The debate on this was adjourned, after a certain amount of discussion, *sine die*. Another resolution was moved by Dr. H. S. Gour on the 18th. July, 1923, which recommended to the Governor-General to move the Secretary of State to carry out his suggestion contained in his despatch on the subject of the further reforms possible under the Constitution. This resolution was carried in the Assembly by 43 votes to 30."¹

Resolutions
on Lord
Peel's
Despatch

On February 5, 1924, Diwan Bahadur T. Rangachariar moved the following resolution in the Legislative Assembly :

"This Assembly recommends to the Governor-General in Council that he be pleased to take at a very early date the necessary steps (including if necessary procuring the appointment of a Royal Commission) for revising the Government of India Act so as to secure for India full self-governing Dominion Status within the British Empire and Provincial Autonomy in the Provinces."

On February 8, 1924, Pandit Motilal Nehru moved the following amendment :

"This Assembly recommends to the Governor-General in Council to take steps to have the Government of India Act revised with a view to establish full responsible government in India and for the said purpose :

Pandit
Motilal
Nehru's
resolution

(a) to summon at an early date a representative Round Table Conference to recommend with due regard to the protection of the rights and interests of important minorities the scheme of a constitution for India; and

(b) after dissolving the Central Legislature to place the said scheme for approval before a newly elected Indian Legislature for its approval and submit the same to the British Parliament to be embodied in a statute."

On February 18, 1924, the amended resolution was adopted by the Assembly, 76 non-officials voting for and 48 (23 officials and 25 non-officials) voting against. Of the 25 non-officials who opposed the resolution only 4 were elected members (3 Muslims, 1 Parsi). 17 Muslim members, including Mr. M. A. Jinnah, voted for the resolution.]

¹ Report of the Reforms Enquiry Committee, pp. 133-134.

I. Speech¹ of Sir Malcolm Hailey², February 8, 1924.

**"Many
interests
concerned"
in India's
attainment
of Dominion
Status :**

**(1) Indian
States**

**(2) Euro-
pean
commerce**

(3) Services

**(4) Minor-
ities**

.... I shall address myself only to the main proposition, that India is now ready, and that India must have, at once, full self-governing Dominion status. I say we cannot afford to allow any one to be in doubt as to the attitude of Government on that question. There are many interests concerned. There are the Indian States. . . . I do not say what their attitude is likely to be; but it is of vital interest to them whether they will at an early date have to deal with an Executive Government which is entirely responsible to an Indian Legislature, or whether they will have to deal with a Governor-General in Council who, as now, is responsible to the British Parliament. And, again, European commerce will desire to know,—I say nothing of what its feelings are likely to be at the contemplated change; but men who have put great sums of money into India, and may be daily increasing the sphere of their operations, have a right to know if we contemplate an early change of government. The men entering our services will desire to know. I predict nothing as to their feelings. I only say that all men entering our services, whether civil or military, whether European or Indian, have a right to know if we intend a radical change of government at an early date. There is another interest, a great and extensive interest, which will desire to know our attitude; I mean the minority communities. . . . it is clear that they ought to know whether the Indian Government is prepared to recognize such a step, and whether the British Government is prepared to entertain it.

.... Mr. Rangachariar's proposition, . . . as it stands, is opposed to the Government of India Act and in two important respects. The pronouncement of August 1917 spoke of "the gradual development of self-governing institutions with a view to the

¹ This speech was delivered in connection with Diwan Bahadur Rangachariar's resolution.

² Home Member in Governor-General's Executive Council.

progressive realisation of responsible government in India". That is also the term used in the Preamble to the Act; that is the term used in the Royal Warrant of Instructions which adds, that "thus will India be fitted to take her place among the other Dominions". The term has its significance; we know that it was deliberately chosen. The Congress and the League had asked the Imperial Government to proclaim its intention to confer self-government on India at an early date and the Cabinet chose the present term. The expression used in the Act is a term of precision, conveying that the Executive in India would be responsible to the Indian Legislature instead of to the British Parliament. If you analyse the term "full Dominion Self-Government", you will see that it is of somewhat wider extent, conveying that not only will the Executive be responsible to the Legislature, but the Legislature will in itself have the full powers which are typical of the modern Dominion. I say there is some difference of substance, because responsible government is not necessarily incompatible with a Legislature with limited or restricted powers. It may be that full Dominion Self-Government is the logical outcome of responsible government, nay, it may be the inevitable and historical development of responsible government, but it is a further and a final step. The second point is this, that the Preamble of the Act specifically provides for the realisation of its ideal by successive stages. Now, it is here perhaps that the real cause of our difference arises. We hold both to the objective and to its realisation by stages. You now object to the imposition of stages. . . . You definitely repudiate the imposition of stages in that progress. . . .

Significance
of the term
"responsible
govern-
ment"

Significance
of the term
"full Domi-
nion
Self-Govern-
ment"

Constitu-
tional
progress
must be
by stages,

* * * * *

I have to ask three, perhaps four questions of the Assembly. Is Dominion Self-Government to be confined to British India only, or is it to be extended to the Indian States? If it is to be extended to the latter, under what terms have they agreed to come in, for I assume that you have got their agreement to this proposition? Are they to be dependent only

Is Dominion
Self-
Government
to be
extended to
Indian
States?

on the Crown, or are they to be controlled by the new Government responsible only to the Indian Legislature instead of a Government responsible to the British Parliament? Will they accept that? . . .

Protection
of
minorities

I pass to a second problem. . . . No conception of full Dominion Self-Government is possible which retains in the hands of an authority other than the Dominion Legislature itself the protection of minority communities. . . . I know that we are told that this is no real difficulty, and that it is we who have served, whether purposely or otherwise, to keep communal difficulties alive; and that when the day of independence has dawned, they will disappear in the bright sunshine of the new freedom. I do not see an equal feeling of confidence reflected in the preamble of the new National Pact, for it definitely states that the only obstacle to Swaraj is "the lack of mutual understanding in the different communities of India". . . .

Problem of
defence

Now I take a third problem. . . . I mean defence. . . . I would remind you again in all earnestness that there are difficulties in the attainment of your ideal of a Dominion army which will in any case long delay its consummation. . . . I warn my friends of the non-martial classes that the power which is now placed in their hands by the ballot box will speedily gravitate into other hands. There will be no British officers and no British troops to hold the balance.

"Political
advance
has
outrun
social
advance".

I have one more question to ask. The demand for Dominion Self-Government assumes that its advocates have satisfied themselves that there exist those social and political foundations on which alone such constitutional structure can safely rest. . . . I do claim that for the moment political advance in India has already outrun social advance. . . .

II. Speech¹ of Pandit Motilal Nehru, Feb. 8, 1924.

Three parts
of amend-
ment

. . . . As will be seen, the proposition divides itself into three parts. The first declares the goal;

¹ With this speech the amendment was moved.

the second and third the various stages which have to be gone through to reach the goal. Now, so far as the first part is concerned, there is no exception taken to it to-day in this House. . . .

. . . . It will be seen. . . that the first part of my proposition is unexceptionable. That there is a deep-seated desire for Swaraj in the country I do not think any one will doubt. That that desire proceeds from the natural cravings of the human heart for freedom, I do not think any one will seriously deny. That being so, I say the first and the last requisite for full responsible government is completely established. According to all modern conceptions, what you have to look to is a genuine desire proceeding from the natural instinct to which I have referred and the determination to attain that desire. That is all that entitles a nation, that is all that has ever entitled a nation, to complete self-government and complete responsibility. But I am not going to put my case so high to-day. The desire for Swaraj. . . has passed through the usual stages of ridicule and intimidation, rather unusually prolonged, and has now, it may be said, and properly said, emerged from an ordeal of fire unscathed and pure. . . . what I ask for by my amendment is, without mincing words, a complete overhauling of the Government of India Act. The Honourable the Home Member has made a very strong case. . . . against that proposition. Now, Sir, what is the chief plank in his argument, and what is the great argument that has always been employed against any further advance in political rights to be given to the Indians? It is said that those who desire any further advance are precluded by the Government of India Act itself from making the demand, because the Preamble sets out in clear words that responsible government will only be granted by successive stages and that Parliament shall be the sole judge of the manner and measure of each advance, or words to that effect. And it is said that you have no business to come forward and ask for anything. It is for you to satisfy Parliament, to satisfy us who are the agents of Parliament here

"Deep-seated desire for Swaraj"

Wanted—
"a complete overhauling of the Government of India Act"

Official argument against further political advance

**Reply to
official
argument**

**There is no
special
sanctity in
Act of 1919.**

**Growth of
conventions
cannot
change
the provi-
sions of the
Act of 1919.**

**Congress
demand
since 1919**

—I mean the Government—that you deserve a further advance and you shall have it but not before that. Now, Sir, our answer, straight and clear, as unequivocal as the Preamble, is that that Preamble is bad, the whole law, the whole Act is as bad as could possibly have been devised to postpone, to stifle and to suppress the natural desire which I have already mentioned. . . . what answer is it that the Act provides so and so, when the one reason why we do not want it is precisely because it provides so and so. Sir, it is arguing in a circle. . . . Now, Sir, I ask what special sanctity is there in this particular Act of Parliament that we must not say a word against it? Wherein does it differ from other Acts of Parliament, all of which may be modified or repealed at any time? We ask for the modification of that Act or for its repeal, whatever may be necessary, and in doing so I really do not know what unconstitutional or improper act we are guilty of.

Then, the next question is, “Is the modification that we ask for justified under the circumstances?” That really is the crux of the whole matter. It has been said. . . . that the Act contains within itself enough to give us that from which we can grow, from which we can acquire more by the building up of conventions and things of that sort. . . . I say that. . . . it will take very strong authority, and that of the weightiest character, to convince me that any conventions can grow so as to defeat the express provisions of a Statute of Parliament. . . . But, even if such conventions could grow, I submit we are not content to let them grow in the way in which it has been suggested. We wish that our rights should be formulated, recognised and clearly admitted, and not only admitted and recognised but actually conceded to us.

. . . . we in the Congress have demanded ever since the year 1919 full responsible government; call it Swaraj, call it Dominion Status, call it anything you like. . . . after the year 1919 the Congress has committed itself to a policy and a programme which

were quite new and which had not been adopted before that year. . . . From the year 1919 up to the present day the demand has been consistent that what we require is responsible government, that the Government of India Act is wholly inadequate and disappointing. The Congress has said that it will not rest until it has obtained either a revision or a repeal of that Act. . . .

. . . . Personally speaking, I say there is no constitution for India. I refuse to believe in this constitution. . . . I do not think that anything deserves the name of a constitution for a country in the making of which the people of the country did not have a voice. . . .

"There is no constitution for India".

Now, Sir, the process laid down is nothing, I submit, but a reversal of the natural order of things. What the Government of India Act provides is that an extraneous authority has the right to determine the stages, the manner, the measure and the time for the advance of a nation to attain its freedom. I do not think there is any one who will question now or seriously argue against the proposition that if there is anything by which nations and communities—big and small—should be governed and should be guided, it is their will. . . . clause 3 of my amendment has a direct reference to and is suggested by the right of self-determination. Now, that is the principle which we want the British Government and Parliament to accept. . . .

Right of self-determination

Now, I shall try to answer the questions which have been put by the Honourable the Home Member His first question was: Is this Dominion Status to be confined to India or will it include Indian States as well, and, if so, on what terms? I say it all depends on our preliminary conversations. If the Indian States want to come in, let us have their representatives too. If they do not want to come in, we do not want them. . . .

Reply to Home Member's questions

Indian States

Defence

Then the next thing was that Dominion Status of course implies protection of the Dominion by its own armies. I do realise that and we are perfectly willing to confer with you as to how that may be done. . . . what army have you got? Is it not the Indian Army—I do not say it is the sole Army that protects us but is it not the largest factor in the British Army in India? I need not go into what the Indian Army has achieved. . . . were they Indian soldiers or were they not?

When it comes to the carrying on of the government, I find three distinguished countrymen of mine on the Government benches. . . .

Communal problem

Then the next question is, there are these communal differences. Of course communal differences there are. Unfortunately they exist. We have not denied them. But as my friend the Honourable the Home Member has read an extract from the Congress Civil Disobedience Inquiry Committee, where the existence of these communal differences has been admitted, perhaps he will like to hear what he has overlooked—the remedy suggested and the reason for it.

Now in that report we find—. . . .

“The Prime Minister of England in the famous speech recently delivered by him in the House of Commons has thus justified the maintenance of the Indian Civil Service for all time to come:

‘There is a great variety of races and creeds in India, probably greater variety than in the whole of Europe. There are innumerable divisive forces there, and if Britain withdrew her strong hand, nothing would ensue except divisions, strife, conflict and anarchy’.”

The report proceeds:

“Now the strong hand of Britain is the British Civil Service in India. Remove the cause of ‘divisions, strife, conflict and anarchy’ and you take away the sole justification for the continuation of that dis-

tinguished service. There can be no question inter-communal differences constitute the sole cause of 'divisions, strife, conflict and anarchy' and that inter-communal unity which means the removal of that cause means also the removal of all justification for the continuance of the Civil Service".

Connection
between
Indian Civil
Service and
communal
problem

Then, after dealing with the causes, the Committee go on to say:

"The only radical cure for the disease is the entire elimination of the mischief-maker; but that, in view of the conflict of interests. . . , cannot happen unless and until the costly maintenance of the Indian Civil Service ceases to depend upon 'divisions, strife, conflict and anarchy'; in other words, unless and until Swarajya is fully established. It is only then that the mischief-maker will lose his occupation and think of some other opening for his activities."

Remedy for
communal
differences :
establish-
ment of
Swarajya

22. LORD IRWIN ON THE RELATIONS BETWEEN THE CENTRAL GOVERNMENT AND THE CENTRAL LEGISLATURE, 1926.

(Address to the European Association,
Calcutta, December, 1926)

Speaking of central politics, so long as there is in the hands of the Governor-General some reserve

1 After the publication of the Report of the Reforms Enquiry Committee (March, 1925) Sir Alexander Muddiman, the then Home Member of the Government of India, moved a resolution in the Legislative Assembly on September 7, 1925, recommending the acceptance of the principle underlying the Majority Report. An amendment, now known as the National Demand of 1925, was moved by Pandit Motilal Nehru. This amendment reiterated and confirmed the demand contained in the resolution passed by the Assembly in February, 1924, asked the Governor-General in Council to take immediate steps to move the British Government to make a declaration in Parliament embodying certain fundamental changes in the Indian constitution which would introduce full responsible government, and recommended the summoning of a Round Table Conference to frame a detailed scheme of government which, after approval by the Legislative Assembly, would be submitted to Parliament to be embodied in a Statute. This amendment was carried by 72 votes to 45.

**Popular
representa-
tives may
escape
sense of
respon-
sibility.**

power by which in the last resort they can secure what they conceive to be essential, it is evidently possible for popular representatives to escape the sense of responsibility that ought to accompany the power, even though only partial, which they exercise. Again, so long as the Government of India is not fully responsible in the strict sense of the word, it is impossible for parties or politicians to feel the salutary checks of being compelled to replace in the task of government those who have been the targets of their criticism and attack. It therefore follows that one of the principal distinctions between the different Indian parties is apt to be the degree of vehemence with which they assail the policy of Government. The latter, necessarily in great degree inarticulate, is presented as the common opponent of patriotic citizens.

**Government
—common
target of
all Indian
parties**

These are real difficulties, unavoidable so long as it is necessary to retain the final power in the hands of a Government not directly or wholly responsible to popularly elected representatives.

23. LORD IRWIN ON PARLIAMENTARY SUPREMACY, 1927.

**(Address to the Legislative Assembly,
January, 1927).**

**'Final
control
of Indian
policy'
vested in
Parliament**

As long as the final control of Indian policy is constitutionally vested in the Secretary of State on behalf of Parliament, it is the duty of the Governor-General to guide his conduct in conformity with the general policy approved by the Imperial Parliament It is his duty with his Government to seek faithfully to represent to the Imperial Government what he conceives to be India's interests, and he must count on the help of the Legislature to enable him to do this fairly. On the other hand it is possible that he may be able to help India by telling those who represent her in her Councils, from his own knowledge, of the manner in which, and the angle from which, the judgment of Parliament is likely to be formed.

I do not ignore the fact that there is a section of opinion in India which rejects the right of Parliament to be the arbiter of the fashion or the time of India's political development. I can understand that opinion, I can acknowledge the sincerity of some of those who hold it, but I can devise no means of reconciling such a position with the undoubted facts of the situation.

But there is another section of opinion, which while hesitating to prefer so fundamental an objection to any right of Parliament to be the judge of these matters, would yet say in effect that it was indefensible for Parliament to exercise its judgment in any sense but that of granting to India forthwith a wide, if not complete extension of responsible power.

The distinction between these two lines of criticism is narrow; for Parliament would be no real judge if its title were held to depend for sanction upon the judgment that it delivers, and it is scarcely possible to impugn its right to deliver a free verdict, without challenging its title to sit in judgment on the case.

24. INDIAN NATIONAL CONGRESS ON SIMON COMMISSION, 1927.

[On November 8, 1927, Lord Irwin announced the formation and composition of the Simon Commission. He declared that the appointment of the Commission two years before the fixed statutory period was due to Indian political pressure. But Lord Birkenhead's biography makes it clear that his main object in advancing the date of enquiry was to keep in his own hands the nomination of the personnel of the Commission and to prevent the risk of a future Labour Government having anything to do with the composition of the Commission. On December 10, 1925, he wrote to Lord Reading, " I always had it plainly in mind that we could not afford to run the slightest risk that the nomination of the 1928 Commission should be in the hands of our successors. You can readily imagine what kind of a Commission in its personnel would have been appointed by Colonel Wedgwood and his friends. I have, therefore, throughout, been of clear opinion that it would be necessary for us, as a matter of elementary prudence, to appoint the Commission not later than the summer of 1927."¹

1 See Birkenhead, *The Last Phase*, pp. 250-251.

When the Simon Commission was successfully boycotted, Lord Birkenhead wrote to the Viceroy in February, 1928, "I should advise Simon to see at all stages important people who are *not* boycotting the commission, particularly Moslems, and the depressed classes. I should widely advertise all his interviews with representative Moslems. The whole policy now is obvious. It is to terrify the immense Hindu population by the apprehension that the Commission is being got hold of by the Moslems and may present a report altogether destructive of the Hindu position, thereby securing a solid Moslem support, and leaving Jinnah high and dry".¹]

I. Resolution, Madras Session, 1927.

**Boycott of
Commission**

**Instructions
to Congress
Organisa-
tions**

**Appeal to
non-official
members of
Legislatures**

Whereas the British Government have appointed the Statutory Commission in utter disregard of India's right of self-determination, this Congress resolves that the only self-respecting course for India to adopt is to boycott the Commission at every form. In particular (a) this Congress calls upon the people of India and all Congress organisations in the country (i) to organise mass demonstrations on the day of the arrival of the Commission in India, and similar demonstrations in the various cities of India which the Commission may visit; (ii) to organise public opinion by vigorous propaganda so as to persuade Indians of all shades of political opinion effectively to boycott the Commission.

(b) This Congress calls upon non-official members of the Indian Legislatures and leaders of political parties and communities of India and all other not to give evidence before the Commission nor co-operate with it in any manner, public or private, nor attend or participate in any social functions given to them.

(c) This Congress calls upon the non-official members of the Indian Legislatures (i) neither to vote for nor serve on Select Committees that may be set up in connection with this Commission; (ii) to throw out every other proposal, motion or demand for grant that may be moved in connection with the work of the Commission.

¹ Birkenhead, *The Last Phase*, p. 255.

(d) This Congress also calls upon the non-official members of the Legislatures not to attend meetings of the Legislatures except for the purpose of preventing their seats from being declared vacant or for the purpose of making the boycott effective and successful or for the purpose of throwing out a Ministry or of opposing any measure which, in the opinion of the Working Committee of the Congress, is detrimental to the interests of India.

Partial
boycott of
Legislatures

(e) This Congress authorises the Working Committee to confer with and secure the co-operation, wherever possible, of other organisations and parties with a view to make the boycott effective and complete.

II. Presidential Address of Dr. M. A. Ansari, Madras, 1927.

Keen disappointment¹ and surprise have been expressed at the exclusion of Indians from its personnel. I must confess I do not share any of these feelings. I am neither disappointed nor surprised. This was exactly what I had anticipated. It is not a question of the appointment of a Hindu peer or a Muslim Knight, nor is it a question whether Indians should participate in its work as members, assessors or advisers. The principle involved is totally different. It is basic and fundamental. No sane or self-respecting Indian can ever admit the claim of Great Britain to be the sole judge of the measure and time of India's political advance. We alone know our needs and requirements best and ours must be the decisive voice in the determination of our future. It is our inherent and inalienable right. Taking its stand on these principles the Congress has all along advocated the convening of a Round Table Conference of the representatives of India and Great Britain with plenipotentiary powers to decide the bases of the future constitution of India, to be incorporated into an Act of Parliament. It is only on these condi-

Indians
cannot 'ever
admit the
claim of
Great
Britain to
be the sole
judge of the
measure
and time of
India's
political
advance'.

1 In his Presidential Address at the Calcutta session of the Congress (1928) Pandit Motilal Nehru described the Simon Commission as a "colossal fraud".

Analogy
of Milner
Commission

tions that Indians can, consistently with national honour and dignity, agree to co-operate. Until Great Britain accepts these terms the Indian National Congress has no other alternative but to ask the people of India to treat the Statutory Commission as our Egyptian brothers treated the Milner Mission, and leave it severely alone. We can have no part or lot in a Commission which has been appointed in direct defiance of the declared will of the people of India.

25. SIMON COMMISSION ON RELATIONS BETWEEN THE SECRETARY OF STATE AND THE GOVERNMENT OF INDIA.

[The Statutory Commission consisted of seven members : Sir John Simon, Lord Burnham, Lord Strathcona, Mr. Edward Cadogan, Vernon Hartshorn and Mr. C. R. Attlee. The Chairman, Sir John Simon, was a Liberal; there were two Labour Members and four Conservatives. It was later on laid down that the members of the Commission were to co-operate with the elected members of the Indian Legislatures, who were to report simultaneously but not jointly with the members of the Commission. The Indian Legislative Assembly boycotted the Commission, but partial co-operation was received from the Provincial Legislative Councils. The *Report* of the Commission was issued in May, 1930.]

Progress of
'Delegation'

264. We now turn to consider the relations between the Secretary of State and the Secretary of State in Council on the one hand and the Government of India on the other. Their statutory control over the Government of India is still in theory complete within the field left to them by the Act of 1919. But for various reasons it is exercised in practice to an extent very much less than a literal interpretation of the Act would warrant. It goes without saying that the "superintendence, direction and control" by an authority in Whitehall of all "acts, operations and concerns" involved in the government of a sub-continent 6,000 miles away is impossible. The essential process of delegation had gone on intermittently for many years before the Reforms, but the policy underlying the Act of 1919 gave it a strong impetus. Delegation, it will be understood, differs from a statutory devolution of powers, in that it does not relieve

Difference
between
'Delegation'
and
'Statutory
devolution
of powers'

the Secretary of State from his responsibility to Parliament; he takes the risk of trusting a subordinate authority to decide matters for which by statute he remains responsible.

265. In the sphere of legislation it is possible to lay down rules to give effect to the general policy. Before the Reforms, no Bill other than a purely formal one could be introduced into any Indian legislature until the Secretary of State in Council had seen and approved its actual terms, or at least a full statement of its scope and purpose. Under the existing rules, which date from 1921, Bills to be introduced in the Central Legislature need not be referred for the approval of the Secretary of State in Council unless they relate to a limited number of subjects; for example, imperial or military affairs, foreign relations, the rights of European British subjects, the law of naturalisation, the public debt, customs, currency and shipping. It is left to the Governor-General in Council to refer for the previous approval of the Secretary of State in Council such provincial Bills as he thinks fit. Since these orders were passed, the instances in which a provincial Bill has been submitted to the Secretary of State could be counted on the fingers of one hand; and though in one or two instances considerable discussion has taken place between the Secretary of State and the Governor-General, no instance can be cited of final objection by the Secretary of State to the introduction of a Bill which the Government of India proposed to promote in the Central Legislature.

Control of
Secretary
of State
over Bills
in Central
Legislature

Control of
Secretary
of State
over Bills
in Provin-
cial
Legislature

But the need for prior reference to the Secretary of State necessarily involves delay and, if a prompt decision is essential, may cause difficulty, *e.g.*, when, in the course of the discussion of a Bill, unforeseen points arise on which negotiations between the Government and members of the Assembly offer hope of a compromise; on the other hand, delay may sometimes afford opportunity for further consideration.

26. SIMON COMMISSION ON INDIRECT INFLUENCE OF THE CENTRAL LEGISLATURE ON THE GOVERNMENT OF INDIA.

Central
Legislature
gives
officials a
clue to the
public mind.

Influence
of Central
Legislature
on legisla-
tion
and admini-
stration

254. The indirect influence of the Assembly on the Government has been of still greater importance. Its extent is hardly realised by the members themselves, who are inclined to lay stress on the theoretical irresponsibility of the Executive. In practice, as officials themselves have borne witness, the Government is greatly influenced by the contact of its Members with the elected representatives. Sir William Harcourt once declared that "the value of political heads of departments is to tell the officials what the public will not stand". Under a pure bureaucracy, officials are apt to make a fetish of efficiency and to fail to give due place to the importance of acceptance by the governed of the proposals of the rulers. This weakness can be best counteracted by close contact with the unofficial mind. We believe that the members of the Central Legislature have performed this useful function, and that their influence has often been beneficial. Further, it is important to remember that the existence of a popularly elected legislature not only operates to amend Government measures after their introduction, but has much effect in deciding what measures should be introduced. Again, the existence of a body of unofficial persons with powers of interpellation sets up in the Administration itself a spirit of self-criticism and desire to avoid occasion for censure.

27. SIMON COMMISSION ON GOVERNOR-GENERAL'S EXECUTIVE COUNCIL.

188. At meetings of the Governor-General's Council, if the Governor-General himself is present, he presides. In his absence, his place is taken by the Member of his Executive Council whom he has appointed to be its Vice-President. At any meeting of his Council the Governor-General, or other person presiding, and one other Member (not being the Commander-in-Chief) form a quorum sufficient for

the exercise of all the functions of the Government of India. All orders of the Governor-General-in-Council are signed by a Secretary to the Government of India. If a difference of opinion arises at a meeting of the Governor-General's Council, the decision of the majority is binding, and, if the Members are equally divided, the Governor-General, or other person presiding, has a second or casting vote. But if what is proposed conflicts with the view of the Governor-General as to what is essential for the safety, tranquillity, or interests of British India, he may, on his own authority and responsibility, overrule the decision, in which case any two Members of the dissentient majority may ask that the matter be reported to the Secretary of State and that the report may be accompanied by copies of any minutes made by Members of the Council.

President and Vice-President of Executive Council

Relations between Governor-General and Executive Council

In practice, the Governor-General's Council meets at short intervals, and all the most important decisions of the Government of India are made by it. There are naturally many other matters which are decided and disposed of in the different departments, which have behind them the authority of the whole Government. One of the Members of Government, who sits in the Legislative Assembly, acts as leader of the House; this duty usually falls to the lot of the Home Member.

Minor matters decided by Department

28. SIMON COMMISSION ON THE WORKING OF DYARCHY.

161. We shall, in the next part of our Report, discuss the actual working of the dyarchic system, the structure of which we have here endeavoured to describe, and one of the most important and difficult questions that will arise will be the extent to which the system has led to the adoption, as a constitutional principle, of the joint responsibility of Ministers. The intention of the authors of the Montagu-Chelmsford Report on the point is not, perhaps, very easy to ascertain. That document, in describing the working of the proposed Executive, stated that "the

Question of joint responsibility of Ministers

Int
the
the
Report

actual decision on a transferred subject would be taken, after general discussion, by the Governor and his Ministers", so that, after whatever meeting there may have been of the Government as a whole, "the decision would be left, as we have stated, to the part of the Government responsible for the particular subject involved". It is evident, therefore, that it was not intended that one-half of the executive was to be held responsible for the decisions of the other, but what is not so clear is whether, within the ambit of the transferred half, it was intended that Ministers should act jointly and stand or fall together. When the Government of India Bill was introduced into the House of Commons and read a second time, it provided that the Governor of a Province, in relation to a transferred subject, should be "guided by the advice of the Minister in charge of the subject". The effect would have been that another Minister would have had no responsibility for what his colleague advised. But the Joint Select Committee took the view that the principle of collective responsibility of Ministers should be established from the start, and consequently recommended that this should appear on the face of the Bill. The language of the clause [now section 52(3)] was, therefore, altered, so that it reads "in relation to transferred subjects, the Governor shall be guided by the advice of his Ministers"—phraseology which, standing by itself, is still somewhat ambiguous, though having regard to the history of the matter there is no doubt of the object in view. It seems unfortunate that the terms of para VI of the Instrument of Instructions to Governors afford some support to a different interpretation:

View of
Joint Select
Committee

Language
of the Act
of 1919

Instrument
of Instruc-
tions to
Governors

"In considering a Minister's advice and deciding whether or not there is sufficient cause in any case to dissent from his opinion, you shall have due regard to his relations with the legislative council and to the wishes of the people of the presidency as expressed by their representatives therein."

Joint ministerial responsibility is, of course, with us a constitutional convention of old standing and we

are so accustomed to it that we should think it strange for an individual Minister to be able to conduct his department without involving his colleagues in responsibility for the policy pursued. But joint responsibility is an extremely difficult thing to put into the text of an Act of Parliament, especially when it was, in any case, not intended that ministerial responsibility should extend over the whole field of administration. And we dwell upon the point now because it is very necessary to appreciate the complexities of the administrative structure which was called into being in the Governors' provinces nine years ago, before attempting the still more difficult task of expressing a judgment as to how it has worked.

Difficulty of enforcing joint ministerial responsibility in Provinces

232. The theory of the reformed constitution is that Ministers, without being answerable for the reserved departments or for policy associated with the reserved side, are jointly responsible to the elected legislature in respect of the transferred half of Government. But it seems to us that it has proved impossible to translate this theory into practice. Difficulties in the sphere of law and order led at one time in the United Provinces to a quite definite swing-back from the method of unified consultation¹, and the then Governor sought to make the practice regulating the taking of decisions by the dyarchic Government strictly conform with the constitutional

Working of the principle of joint ministerial responsibility

1 "The second matter on which people began to lose faith in dyarchy was the unwillingness of Governors to take the Indian Ministers into their confidence in the disposal of serious and grave administrative questions and in the initiation of new policies. The joint deliberation of such questions in a united Cabinet . . . hardly ever materialized in any province and was honoured more in the breach than in the observance. In Bengal, when new repressive measures were enforced, the Indian Ministers of the Crown were hardly ever consulted. In Bengal during the height of the non-cooperation movement, when hundreds of young students were arrested under the Criminal Law Amendment Act, and even when Srimati Basanti Devi (C. R. Das's wife) and some of her women compatriots were arrested in Calcutta in December, 1921, for hawking *Khaddar*, the Indian Ministers were kept in complete ignorance of these official designs."—P. C. Ray, *Life and Times of C. R. Das*, pp. 185-186.

Case of Bengal

theory. But it is not clear that any greater success was obtained in this instance in establishing in the eyes of the public the principle of the responsibility of Ministers to the legislature.

Harmonious working of Dyarchy rendered difficult by the attitude of the Legislature and the public

The intention of dyarchy was to establish, within a certain definite range, responsibility to an elected legislature. If this intention is not carried out, the justification for the constitutional bifurcation and for all the complications which it brings in its train is difficult to find. In the light of experience, it may be doubted whether the object aimed at could be attained as long as both halves of Government have to present themselves before the same legislature. The practical difficulty in the way of achieving the objective of dyarchy and of obtaining a clear demarcation of responsibility arises not so much in the inner councils of Government as in the eyes of the legislature, the electorate, and the public.

'Two different functions' of Provincial Legislature

233. Provincial legislatures were by the nature of the constitution set the difficult task of discharging two different functions at the same time. In one sphere, they were to exercise control over policy; in the other, while free to criticise and vote or withhold supply, they were to have no responsibility. The inherent difficulty of keeping this distinction in mind has been intensified by the circumstances under which the councils have worked to such an extent that perhaps the most important feature of the working of dyarchy in the provincial councils, when looked at from the constitutional aspect, is the marked tendency of the councils to regard the Government as a whole, to think of Ministers as on a footing not very different from that of Executive Councillors, to forget the extent of opportunities of the legislatures on the transferred side and to magnify their functions in the reserved field.

234. The Joint Select Committee's view of the relationship between Members and Ministers in the Legislature was as follows :—

"Members of the executive council and Ministers should not oppose each other by speech or vote; members of the executive council should not be required to support by speech or vote proposals of Ministers of which they do not approve, nor should Ministers be required to support by speech or vote proposals of the executive council of which they do not approve; they should be free to speak and vote for each other's proposals when they are in agreement with them."

Joint Select Committee on relations between Ministers and Members of Executive Council

The temperature of Indian politics is seldom so tepid as to make such detachment practicable. Ministers who are not for the Government policy are naturally regarded as against it. We learnt that in the fastness of Shillong it was possible for Ministers with considerable frequency to abstain from supporting the policy of the Governor in Council without untoward results. This was rarely so elsewhere. Members and Ministers were in too great need of mutual support. It is true, nevertheless, that a few instances did occur (mainly in the United Provinces) of members actually voting against Ministers and Ministers against members.

'Detachment' recommended by Joint Select Committee not practicable'

Difficulties Produced by Working of Dyarchy.

235. We have already mentioned the rarity of an assured elected majority in support of Ministers. The effect produced has been profound. It is largely psychological and deserves careful analysis. Ministers are seen to be, and feel themselves to be largely dependent on the official bloc; they are necessarily in close relation with the reserved side of Government; and it has not infrequently happened that a Minister is subsequently appointed to be an Executive Councillor. All this helps to create a feeling that, when an elected member is appointed a Minister, he becomes a "Government man", and Ministers themselves have seldom altogether escaped the effect of the instinctive opposition which is aroused by their association with "Government", with the result that the ties between them and their supporters are

Ministers dependent on votes of official and nominated members

Ministers become 'Government men.'

weakened¹. It is far from being the case that the appointment of a leader of a group to ministerial office has increased his authority with his former followers.

Administra-
tion of
'Reserved'
subjects
influenced
by Ministers
and their
followers

There have also been reactions on the reserved side of Government. Ministers, who owe so much to the support of the official bloc, endeavour to obtain for the reserved side of Government the vote of elected members with whom they are specially associated, though they do not invariably succeed. It is, of course, important that this support should be given to the reserved side, for otherwise it may find itself in a minority, and the Governor in Council is naturally unwilling to invoke, save as a last resort, special powers of restoration and certification. But this situation involves the consequence that the reserved side of Government may be much influenced by Ministers and their following. Decisions to be reached by the Governor in Council are affected by calculations of the probable attitude of ministerial supporters. The stronger the following of Ministers, the greater their influence on the reserved side, and the theoretical distinctions involved in the idea of dyarchy are likely to be blurred in practice. Thus the two halves of Government have been thrown into each other's arms through their relations with the legislature, no less than by the impossibility of conducting the administration in compartments. The resulting almost irresistible impulse towards a unification of Government has probably been all to the good from the point of view of the efficient conduct of business;

'Distinctions
involved
in the
idea of
dyarchy
blurred in
practice'

1 The following criticism of the conduct of Sir Surendra Nath Banerjee as a Minister comes from the pen of a well-informed publicist: "During years of his office as Minister, Sir Surendra Nath had gone back on the dearest principles of his earlier public life and almost uniformly supported the bureaucracy, of which he was once the greatest enemy and unsparing critic. . . . In these three years the intoxicating fumes of power and authority had made a complete wreck of the erstwhile tribune of the people. Under the spell of office, he supported the white rulers in flouting public opinion all along the line and in suppressing the popular will and popular aspirations in all crucial questions."—P. C. Ray, *Life and Times of C. R. Das*, p. 186.

but the underlying and fundamental conception of the dyarchic system—complete "responsibility" of Ministers in a certain defined field, and in that field only—has become almost hopelessly obscured.

It would, of course, be an exaggeration to say that there was no difference in the attitude of the councils towards Ministers and Executive Councillors. There has usually been distinctly less opposition to ministerial measures and to demands for grants on the transferred side, but this has probably been largely due to the nature of the subjects assigned to each. The unpopular tasks of Government are left to be discharged by its official members. Police or land revenue administration are not subjects likely to arouse enthusiasm and often involve measures of great unpopularity; while for education, for health administration, and for other departments in the hands of Ministers, to which the term "Nation-building" is so frequently attached, there is a very real keenness.

Difference in the attitude of Councils towards Ministers and Executive Councillors

29. RECOMMENDATIONS OF THE NEHRU COMMITTEE, 1928.

[In accordance with a resolution of the Madras session of the Congress (1927) an All-Parties Conference was summoned at Delhi in February and March, 1928, and it was agreed between the Congress and other organisations present that the question of a constitution for India should be discussed on the basis of full responsible government. In May, 1928, the Conference appointed a Committee, with Pandit Motilal Nehru as President, to draft the principles of a constitution before the 1st July next. The Report of the Nehru Committee was well-received, although it laid down Dominion Status, not complete independence, as India's political objective. The Calcutta Congress adopted the following resolution :—

"This Congress, having considered the constitution recommended by the All-Parties Committee Report, welcomes it as a great contribution towards the solution of India's political and communal problems and congratulates the committee on the virtual unanimity of its recommendations, and, whilst adhering to the resolution relating to complete independence passed at the Madras Congress, approves of the constitution drawn up by the Committee as a great step in

political advance, specially as it represents the largest measure of agreement attained among the important parties in the country.

Subject to the exigencies of the political situation, this Congress will adopt the constitution if it is accepted in its entirety by the British Parliament on or before the 31st. December, 1929, but in the event of its non-acceptance by the date or its earlier rejection the Congress will organise a campaign of non-violent Non-co-operation. . . ."]

Constitutional Status of India.

**Dominion
Status**

1. India shall have the same constitutional status in the comity of nations known as the British Empire, as the Dominion of Canada, the Commonwealth of Australia, the Dominion of New Zealand, the Union of South Africa and the Irish Free State¹, with a Parliament having powers to make laws for the peace, order and good government of India, and an Executive responsible to that Parliament, and shall be styled and known as the Commonwealth of India.

* * * * *

Fundamental Rights.

**Source of
authority
—people**

4. (i) All powers of government and all authority, legislative, executive and judicial, are derived from the people and the same shall be exercised in the Commonwealth of India through the organisations established by or under, and in accord with, this constitution.

* * * * *

**Why
Dominion
Status was
accepted
instead of
independence**

1 "The Committee, although a small one, consists of members belonging to different political schools and to different political groups. . . . There were two formidable difficulties in the way of complete or even substantial unanimity. The first arose from the difference in the general outlook of the Congress and that of the other organisations, the former having at its last session adopted a resolution declaring independence as its goal and the latter aiming at dominion status. . . . Some members of the Committee desired to adhere to the position taken up at Delhi, but a majority was of opinion that a choice had to be made. This choice, in view of the circumstances mentioned above, with so many different parties co-operating, could only be one—dominion status. On any higher ground a general agreement was not obtainable."—*Nehru Report*, p. 24.

(ix) There shall be no state religion for the Commonwealth of India or for any province in the Commonwealth, nor shall the state either directly or indirectly endow any religion or give any preference or impose any disability on account of religious belief or religious status.

* * * * *

(xix) Men and women shall have equal rights as citizens.

Parliament.

5. The legislative power of the Commonwealth shall be vested in a Parliament which shall consist of the King, a Senate and a House of Representatives herein called the Parliament.

6. The Governor-General shall be appointed by the King and shall have, and may exercise in the Commonwealth, during the King's pleasure, but subject to this constitution, such powers and functions of the King as His Majesty may assign to him.

* * * * *

8. The Senate shall consist of 200 members to be elected by the Provincial Councils, a specific number of seats being allotted to each province on the basis of population, subject to a minimum. The election shall be held by the method of proportional representation with the single transferable vote. (The Hare system).

9. The House of Representatives shall consist of 500 members to be elected by constituencies determined by law. Every person of either sex, who has attained the age of 21, and is not disqualified by law, shall be entitled to vote.

13. Parliament shall, subject to the provisions of this constitution, have power to make laws

(a) for the peace, order and good government of the Commonwealth in relation to all matters not coming in the classes of subjects by this Act assigned to the legislatures of provinces;

- (b) for the nationals and servants of the Commonwealth within other parts of India as well as those without and beyond India;
- (c) for the Government officers, soldiers, airmen and followers in His Majesty's Indian forces, wherever they are serving, in so far as they are not subject to the Army Act or the Air Force Act; and
- (d) for all persons employed or serving in or belonging to the Royal Indian Marine Service or the Indian Navy.

**Foreign
affairs**

14. The powers of Parliament with respect to foreign affairs, not including the Indian States, shall be the same as exercised by the self-governing dominions.

22. The executive power of the Commonwealth is vested in the King and is exercisable by the Governor-General as the King's representative, subject to the provisions of this Act and of the laws of the Commonwealth.

**Central
Executive
Council**

28. (a) There shall be an Executive Council consisting of the Prime Minister and, until Parliament otherwise provides, not more than six Ministers of the Commonwealth.

(b) The Prime Minister shall be appointed by the Governor-General and the Ministers shall also be appointed by him on the advice of the Prime Minister.

(c) The Executive Council shall be collectively responsible to the legislature for all matters concerning the departments of the Commonwealth administered by members of the Executive Council.

**High Commissioner and Foreign
Representatives**

**Foreign
affairs**

26. The Commonwealth shall have the power to appoint High Commissioners and other foreign representatives similar to that exercised by Canada and other dominions. . . .

The Provincial Legislature

28. The legislative power of a province shall be vested in the King and the local Legislative Council.

29. There shall be a Governor of every province who shall be appointed by the King and represent His Majesty in the province. Governor

* * * *

31. (i) There shall be one member of the Provincial Legislative Council for every 100,000 of the population of the said province. . . . Provincial Legislature

(ii) . . . Every person of either sex who has attained the age of 21 and is not disqualified by law shall be entitled to vote.

The Provincial Executive

43. The executive power of the province shall be vested in the Governor acting on the advice of the provincial Executive Council. Provincial Executive Council

44. There shall be an Executive Council for every province consisting of not more than five Ministers appointed by the Governor.

45. In appointing the Executive Council the Governor shall select the Chief Minister and appoint others only on his advice.

The Judiciary

46. There shall be a Supreme Court which shall exercise such jurisdiction as Parliament shall determine. Supreme Court

* * * *

49. The Supreme Court shall have original jurisdiction in all matters—

(i) referred to the Supreme Court by the Governor-General-in-Council under Section 85; Jurisdiction of Supreme Court

(ii) in which the Commonwealth, or person suing or being sued on behalf of the Commonwealth, is a party;

- (iii) affecting consuls or other representatives of other countries;
- (iv) between provinces;
- (v) arising under this constitution or involving its interpretation.

Indian States

Relations
between
Common-
wealth
and
States

85. The Commonwealth shall exercise the same rights in relation to, and discharge the same obligations towards, the Indian States, arising out of treaties or otherwise, as the Government of India has hitherto exercised and discharged.

In case of any difference between the Commonwealth and any Indian State on any matter arising out of treaties, engagements, sanads, or similar other documents, the Governor-General-in-Council may, with the consent of the State concerned, refer the said matter to the Supreme Court for its decision.

Amendment of the Constitution

87. Parliament may, by law, repeal or alter any of the provisions of the constitution. . . .

Communal Representation

I. There shall be joint mixed electorates throughout India for the House of Representatives and the provincial legislatures.

Central
Legislature

II. There shall be no reservation of seats for the House of Representatives except for Muslims in provinces where they are in a minority and non-Muslims in the N.W.F. Province. Such reservation will be in strict proportion to the . . . population. . . The Muslims or non-Muslims, where reservation is allowed to them, shall have the right to contest additional seats.

III. In the provinces

- (a) there shall be no reservation of seats for any community in Punjab and Bengal;

- (b) in provinces other than the Punjab and ^{Provincial} Bengal there will be reservation of seats ^{Legislatures} for Muslim minorities on population basis with the right to contest additional seats;
- (c) in the N.W.F. Province there shall be similar reservation of seats for non-Muslims with the right to contest other seats.

IV. Reservation of seats, where allowed, shall be for a fixed period of ten years.

30. LORD IRWIN ON THE DOUBLE DUTY OF MODERN VICEROYS, 1929.

(Address to the Legislative Assembly,
January, 1929)

Whoever holds the position of Viceroy and Governor-General of India is bound through his office and conscience by a double duty. He is under the plain obligation of seeing that the King's Government in India is carried on, with due respect for the law. . . . But in another and not less important capacity the Viceroy stands as intermediary between India and Great Britain, and as such will constantly endeavour to interpret as faithfully as he may the hopes, the feelings, the desires of the Indian people to those who may from time to time compose His Majesty's Government in Great Britain. If I may quote words which are used in connection with another office in the British constitution, he will "beg His Majesty's Government ever to place the most favourable construction upon all their proceedings."

31. LORD IRWIN ON THE POLITICAL GOAL OF INDIA.

I. Address to the European Association,
Calcutta, December, 1928.

You . . . have referred to the movement recently undertaken in certain quarters in India on behalf of the policy of complete and total independence, and I

**Demand for
'complete
and total
independence'
of India**

**This
demand is
damaging
to India.**

notice that it has been officially asserted by a recognised political organisation that India can enjoy no liberty unless and until the British connexion is entirely severed. . . . I make bold to say that the most bitter and confirmed reactionary would never have it in his power to inflict one-tenth of the damage upon India's cause that it is likely to suffer at the hands of its false friends, who would guide it towards the morass of independence.

**Factors of
unity in
India**

If it is necessary, as it clearly is, for India to raise her national life on a foundation of true national unity, what greater disservice can any persons render to her than by bending all their energies to destroy that which is to-day the principal factor of unity throughout the Indian Peninsula? Of the unifying influences that make for nationhood, I make bold to say that the most important in the life of India to-day, viewed as a single entity throughout the whole wide extent and variety of what her name comprises, are these: First, she is a geographic unit, all parts of which it may be said share a broad economic interest. Secondly, and more powerful, is the common loyalty to the Person and Throne of the King-Emperor. . . . Destroy that, and you have, by violating the most cherished sentiment of millions, erected an enduring and insuperable barrier to the achievement of a free Indian nationhood.

**Demand for
independence
will alienate
British
opinion.**

It is not difficult to forecast what must be the reaction upon British opinion of this assertion of independence as the goal of a great political party by persons who would claim the title of responsible politicians. Those in Great Britain who sympathise most warmly with the ideal of India attaining at the earliest possible moment the status of any of the other great Dominions of the Crown, will find the ground cut from their feet if British opinion ever becomes convinced, as some apparently are now endeavouring to convince it, that so-called Dominion Status was only valued by India as a stepping-stone to a complete severance of her connexion with the British Commonwealth.

From the point of view, therefore, alike of its effect upon Indian unity and public opinion of Great Britain, I can feel no doubt that the demand for independence must do an irreparable injury to India's cause. . . .

II. Declaration, October 31, 1929.

It is the desire of the British Government that India should, in the fullness of time, take her place in the Empire in equal partnership with the Dominions. But in view of the doubts which have been expressed both in Great Britain and in India regarding the interpretation to be placed on the intentions of the British Government¹ in enacting the statute of 1919, I am authorised on behalf of His Majesty's Government to state clearly that, in their judgment, it is implicit in the Declaration of 1917 that the natural issue of India's constitutional progress, as there contemplated, is the attainment of Dominion Status.²

Interpre-
tation of
Declaration
of 1917

III. Address to the Legislative Assembly, January, 1930.

The intention of my statement was to focus attention on three salient points. First, while say-

'Three
salient
points':

1 Sir Malcolm Hailey, Home Member of the Government of India, drew a distinction between responsible government and Dominion Status in a speech delivered in the Indian Legislative Assembly on February 8, 1924. (See p. 149). The Nehru Report observes, "This speech may be taken to be the beginning of a new current of thought in official circles in India, and we find that it has ever since been re-echoed in the speeches of some British statesmen and the writings of publicists in the British press, and in books that have been brought out by retired English members of the bureaucracy in India. Sir Malcolm Hailey's arguments and the implications of his arguments were at once repudiated by the members of the Legislative Assembly and by Indian public opinion outside the Assembly."

Hailey's
interpre-
tation of
Declaration
of 1917

Comments
of Nehru
Committee
on Hailey's
interpreta-
tion

2 Great Britain and the Dominions (Canada, Australia, South Africa, New Zealand, Eire) "are autonomous communities within the British Empire, equal in status, in no way subordinate one to another in any aspect of their domestic or external affairs, though united by a common allegiance to the Crown, and freely associated as members of the British Commonwealth of Nations."—*Resolution of the Imperial Conference, 1926.*

What is
Dominion
Status?

- (1) Goal of British policy
- (2) Problem of States
- (3) Round Table Conference
- ing that obviously no British Government could pre-judge the policy which it would recommend to Parliament after the report of the Statutory Commission had been considered, it re-stated in unequivocal terms the goal to which British policy in regard to India was directed. Secondly, it emphasised Sir John Simon's assertion that the facts of the situation compel us to make a constructive attempt to face the problem of the Indian States, with due regard to the treaties which regulate their relations with the British Crown¹; thirdly, it intimated the intention of His Majesty's Government to convene a Conference on these matters before they themselves prejudged them by formulation of even draft conclusions.

Assertion of goal is different from attainment of goal.

I have never sought to delude Indian opinion into the belief that a definition of purpose, however plainly stated, would of itself, by the enunciation of a phrase, provide a solution for the problems which have to be solved before that purpose is fully realised. The assertion of a goal is of necessity a different thing from the goal's attainment. No sensible traveller would feel that the clear definition of his destination was the same thing as the completion of his journey. But it is an assurance of direction, and in this case I believe it to be something of tangible value to India that those who demand full equality with the other self-governing units of the British Commonwealth on her behalf should know that Great Britain on her side also desires to lend

Lord Irwin on Indian States.

¹ Addressing the Chamber of Princes in November, 1926, Lord Irwin said: "...I realise to the full the sanctity and binding nature of the treaties, and....I shall do all in my power to observe them....The general policy of Government remains, as it has been in the past, a policy of non-interference in affairs that are internal to the States. It is only in extreme cases that the Paramount Power will intervene, and....any such action which it is ever thought necessary to take will be taken only after the most deliberate and sympathetic consideration, and with the greatest reluctance. Its sole purpose will be the furtherance of the interest, present and future, of the Indian States, and of the general Order of the Princes themselves."

her assistance to India in attaining to that position. The desire of most responsible opinion in India and that of His Majesty's Government is thus the same.

Although it is true that in her external relations with other parts of the Empire, India exhibits already several of the attributes of a self-governing Dominion, it is also true that Indian political opinion is not at present disposed to attach full value to these attributes of status, for the reason that their practical exercise is for the most part subject to the control or concurrence of His Majesty's Government. The demand for Dominion Status is based upon the general claim to be free from that control, more especially in those fields that are regarded as of predominantly domestic interest.

"India already exhibits several attributes of a self-governing Dominion".

32. INDIAN NATIONAL CONGRESS AND THE GOAL OF INDEPENDENCE.

I. Mahatma Gandhi's Speech, Nagpur Congress, 1920.

The resolution which I have the honour to move is as follows: "The object of the Indian National Congress is the attainment of Swarajya by the people of India by all legitimate and peaceful means."

'Attainment of Swarajya'

There are only two kinds of objections. . . that will be advanced from this platform. One is that we may not to-day think of dissolving the British connection. What I say is that it is derogatory to national dignity to think of the permanence of British connection at any cost. . . I do not, for one moment, suggest that we want to end the connection at all costs, unconditionally. If the British connection is for the advancement of India, we do not want to destroy it. But if it is inconsistent with our national self-respect, then it is our bounden duty to destroy it. There is room in this resolution for both—those who believe that, by retaining British connection, we can purify ourselves and purify British people, and those who have no belief.

Permanence of British connection — derogatory to national self-respect

II. Presidential Address of Mahatma Gandhi, Belgaum Congress, 1924.

'Swaraj
within the
Empire'

Wanted—
'ability to
be totally
independent
without
asserting
the inde-
pendence'

The above sketch presupposes the retention of the British connection on perfectly honourable and absolutely equal terms. But I know that there is a section among Congressmen who want under every conceivable circumstance complete independence of Britain. They will not have even an equal partnership. In my opinion if the British Government mean what they say and honestly help us to equality, it would be a greater triumph than a complete severance of the British connection. I would therefore strive for Swaraj within the Empire but would not hesitate to sever all connection, if severance became a necessity through Britain's own fault. I would thus throw the burden of separation on the British people. The better mind of the world desires to-day not absolutely independent states warring one against another but a federation of friendly interdependent states. The consummation of that event may be far off. I want to make no grand claim for our country. But I see nothing grand or impossible about our expressing our readiness for universal interdependence rather than independence. It should rest with Britain to say that she will have no real alliance with India. I desire the ability to be totally independent without asserting the independence. Any scheme that I would frame, while Britain declares her goal about India to be complete equality within the Empire, would be that of alliance and not of independence without alliance. I would urge every Congressman not to be insistent on independence in each and every case, not because there is anything impossible about it, but because it is wholly unnecessary till it has become perfectly manifest that Britain really means subjugation in spite of her declaration to the contrary.

III. Resolution of the Congress, Madras Session, 1927.

'Complete
independ-
ence'

This Congress declares the goal of the Indian people to be Complete National Independence.

IV. Resolution of the All-India Congress Committee, Delhi Session, 1928.

This meeting of the A. I. C. C. adheres to the 'No true freedom till British connection is severed' decision of the Madras Congress declaring complete independence to be the goal of the Indian people and is of opinion that there can be no true freedom till the British connection is severed.

V. Presidential Address of Pandit Motilal Nehru, Calcutta Congress, 1928.

What is our destination?

My answer straight and simple is freedom in substance, and not merely in form, by whatever name you call it. The Madras Congress has declared the goal as complete independence. The All-Parties' Committee has recommended Dominion Status. I have explained my position more than once but with your permission I shall re-state it here as clearly as I can. To put it in a nutshell it comes to this: I am for complete independence—as complete as it can be—but I am not against full Dominion Status—as full as any Dominion possesses it to-day, provided I get it before it loses all attraction. I am for severance of British connection as it subsists with us to-day but am not against it as it exists with the Dominions.

'Freedom in substance'

'Not against full Dominion Status'

Let me explain. National freedom unrestricted and unqualified is the natural craving of the human soul. I do not believe that there is a single Indian, be he or she a member of a party or group, or one completely detached from all parties and groups, who does not love freedom and will not have it. Differences arise only when the question is raised whether it is possible to have and to keep freedom; and it is then that we find opinion sharply divided. There are those who have the faith in them and in their countrymen to answer the question by an emphatic "yes"—and I may at once say that I am one of them. But there are also those who will shake their heads, some from conviction and others in doubt. Complete independence is the goal of the former, Dominion Status that of the latter. I will not under-

Can we get, and keep freedom?

Struggle
will bring
freedom.

take a fruitless enquiry into the relation or want of relation between independence and Dominion Status. It does not matter to me whether theoretically they belong to the same or different stocks, or whether one is or is not the negation of the other. What matters to me is that Dominion Status involves a very considerable measure of freedom bordering on complete independence. I am therefore not against an exchange of our object independence with whatever measure of freedom there is in full Dominion Status if such exchange is offered. But I cannot make Dominion Status my goal as it has to come from another party over whom I have no control. The only way I can acquire such control is by working in right earnest for complete independence. I say 'in right earnest' because I know mere bluff will not take me far; it is only when complete independence is in sight that the party in power will be inclined to negotiate for something less. Empty bluff will not carry us to that stage. Solid work and ungrudging sacrifice alone will do it. When that work is done, and sacrifice made, the party having the whip hand will dictate. Whether it is to be Dominion Status or complete independence will depend upon whether the conditions then prevailing are similar to those of Ireland or to those of the United States of America at the time when each came into what she now has. Meanwhile, there is nothing before us but a protracted life-and-death struggle on the one side, and continued repression relieved by an occasional dose of undiluted oppression on the other. It follows therefore that whatever the ultimate goal, we must be prepared to traverse the same thorny path to reach it. If we are not so prepared, independence will ever be an idle dream and Dominion Status an ever receding will-o'-the-wisp.

Criticism of
Viceroy's
speech

I must here notice another part of the Viceroy's speech¹ from which I have already quoted. He draws a dark picture of the damage that India is 'likely

¹ See Document No. 31.

to suffer at the hands of its false friends who would guide it towards the morass of independence." The description of 'independence' as a 'morass' is rather original. It would be more correct to say that we have to cross a morass before we arrive at independence. But the morass surrounds us on all sides and we can arrive nowhere except by crossing it. That being so our friends who support the movement say: why not make for independence pure and unadulterated which depends upon your own effort, however long and arduous, instead of floundering in the direction of Dominion Status which depends upon the good will of Britain. They argue that it will be sheer waste of time, energy, and sacrifice first to struggle in the morass for Dominion Status and when you find your way barred then to bungle back to the starting point and plunge again into the same morass to struggle for independence. From Lord Irwin's point of view this argument is unanswerable. From my point of view Dominion Status is passed on the way to independence, and if it is refused you have simply to press on to your destination which must always be independence. Lord Irwin's argument based on loyalty to the Crown can easily be overstressed. Loyalty is a fine thing but the strain it can bear is not unlimited.

Remarks on
loyalty

But it is obvious that independence does not mean walking out of the world. If you continue to live in it you must come across others who also live in the same world. It is neither necessary nor possible for the existence of an independent state in the present day world conditions to cut off all political, economic, and social relations with other states. Indeed the more independent you are, the more necessary it will be to establish relations all round. When, therefore, we talk of the severance of the British connection we do not mean a cessation of all relations, but such appropriate change in existing relations as is necessary to transform a dependency into a free state. The extent of the change will depend upon the extent of freedom we achieve. If it is

What
severance
of British
connection
means

Dominion Status; the change, as it is now well understood, will be from a dependency to 'an autonomous nation, free and equal member of the British Commonwealth of Nations.' If, however, it is complete independence, India will stand out of the British Commonwealth of Nations and the nature of her relations with Great Britain will be determined by treaty and mutual understanding. In either case, some connection with other nations including the British must subsist if we mean to take an active part in shaping our own future and that of the world.

VI. Presidential Address of Pandit Jawaharlal Nehru, Lahore, 1929.

What independence means

If the Calcutta resolution holds, we have but one goal to-day, that of independence. Independence is not a happy word in the world to-day; for it means exclusiveness and isolation. Civilisation has had enough of narrow nationalism and gropes towards a wider co-operation and inter-dependence. And if we use the word 'independence' we do so in no sense hostile to the larger ideal. Independence for us means complete freedom from British domination and British imperialism. Having attained our freedom, I have no doubt that India will welcome all attempts at world co-operation and federation, and will even agree to give up part of her own independence to a larger group of which she is an equal member.

The British Empire is not a Commonwealth.

Disintegrating Empire of Britain

The British Empire to-day is not such a group and cannot be so long as it dominates over millions of people and holds large areas of the world's surface despite the will of their inhabitants. It cannot be a true commonwealth so long as imperialism is its basis and the exploitation of other races its chief means of sustenance. The British Empire to-day is indeed gradually undergoing a process of political dissolution. It is in a state of unstable equilibrium. The Union of South Africa is not a very happy member of the family, nor is the Irish Free State a willing one. Egypt drifts away. India could never be an

equal member of the Commonwealth unless imperialism and all it implies is discarded. So long as this is not done, India's position in the Empire must be one of subservience and her exploitation will continue.

* * * *

There is talk of world-peace and pacts have been signed by the nations of the world. But despite pacts armaments grow and beautiful language is the only homage that is paid to the goddess of peace. So long as there is domination of one country by another, or the exploitation of one class by another, there will always be attempts to subvert the existing order and no stable equilibrium can endure. Out of imperialism and capitalism peace can never come. And it is because the British Empire stands for these and bases itself on the exploitation of the masses that we can find no willing place in it. No gain that may come to us is worth anything unless it helps in removing the grievous burdens on our masses. The weight of a great Empire is heavy to carry and for long our people have endured it. Their backs are bent down and their spirit has almost broken. How will they share in the Commonwealth partnership if the burden of exploitation continues? Many of the problems we have to face are the problems of vested interests mostly created or encouraged by the British Government. The interests of the Rulers of Indian States, of British officials and British capital and Indian capital and of the owners of big Zamindaries are ever thrust upon us and they clamour for protection. The unhappy millions who really need protection are almost voiceless and have no advocates.

* * * *

We have had much controversy about Independence and Dominion Status and we have quarrelled about words. But the real thing is the conquest of power by whatever name it may be called. I do not think that any form of Dominion Status applicable to India will give us real power. A test of this power would be the entire withdrawal of the alien army of occupation and economic control. Let us, therefore, concentrate on these, and the rest will follow easily.

Misery of Indian masses cannot be relieved if India remains a part of the exploiting Empire of Britain.

Vested interests

Controversy regarding Dominion Status and independence

Britain has
no right to
dictate to
India.

We stand therefore to-day for the fullest freedom of India. This Congress has not acknowledged and will not acknowledge the right of the British Parliament to dictate to us in any way. To it we make no appeal. But we do appeal to the Parliament and the conscience of the world, and to them we shall declare, I hope, that India submits no longer to any foreign domination. To-day or to-morrow, we may not be strong enough to assert our will. We are very conscious of our weakness, and there is no boasting in us or pride of strength. But let no one, least of all England, mistake or under-rate the meaning or strength of our resolve. Solemnly, with full knowledge of consequences I hope, we shall take it and there will be no turning back. A great nation cannot be thwarted for long when once its mind is clear and resolved. If to-day we fail and to-morrow brings no success, the day after will follow and bring achievement.

* * * *

VII. Resolution of the Congress, Lahore Session, 1929.

Nehru
Report
lapsed

This Congress, in pursuance of the resolution passed at its session at Calcutta last year, declares that the word "Swaraj" in Article 1 of the Congress Constitution shall mean complete independence and further declares the entire scheme of the Nehru Committee's report to have lapsed and hopes that all Congressmen will henceforth devote their exclusive attention to the attainment of complete independence for India.

VIII. Resolution of the Congress Working Committee,¹ January 26, 1930.

We believe that it is the inalienable right of the Indian people, as of any other people, to have freedom and to enjoy the fruits of their toil and have

¹ This resolution, of which only the first paragraph is quoted here, was adopted by public meetings all over India on "Independence Day" (January 26) every year from 1930 to 1947.

the necessities of life, so that they may have full opportunities of growth. We believe also that if any Government deprives a people of these rights and oppresses them, the people have a further right to alter it or abolish it. The British Government of India has not only deprived the Indian people of their freedom but has based itself on the exploitation of the masses, and has ruined India economically, politically, culturally and spiritually. We believe therefore that India must sever the British connection and attain *Purna Swaraj* or complete independence.

**IX. Presidential Address of Sardar
Vallabhbhai Patel, Karachi, 1931.**

There is no receding from the Lahore resolution of Complete Independence. This independence does not mean, was not intended to mean, a churlish refusal to associate with Britain or any other power. Independence therefore does not exclude the possibility of equal partnership for mutual benefit and dissolvable at the will of either party. Independence does not exclude partnership.

**X. Resolution of the Congress,
Karachi Session, 1931.**

This Congress desires to make it clear, that the Congress goal of *Purna Swaraj* (Complete Independence) remains intact

**XI. Resolution of the Working Committee,
September, 1931.**

. *Purna Swaraj* includes unfettered national control, among other things, over the Army and other defence forces, external affairs, fiscal and commercial matters, financial and economic policy. A free India should have the freedom to make its choice between voluntary partnership with the British and complete separation Meaning of 'Purna Swaraj'

33. INDIAN NATIONAL CONGRESS ON THE FIRST ROUND TABLE CONFERENCE, 1931.

(Resolution of the Working Committee,
January 21, 1931).

[The reactions to Lord Irwin's announcement¹ of October, 1929, were favourable. The Working Committee of the Congress issued a manifesto on November 2, 1929, in which the following cautious statement was made: "...we hope to be able to tender our co-operation to His Majesty's Government in their effort to evolve a scheme of Dominion constitution suitable to India's needs, but we deem it necessary that certain acts should be done and that certain points should be cleared so as to inspire trust and to ensure the co-operation of the principal political organizations in the country". On December 23, 1929, some Congress leaders including Mahatma Gandhi, and Mr. M. A. Jinnah, saw Lord Irwin at Delhi and wanted an assurance that the contemplated Conference in London would proceed on the basis of full Dominion Status for India. Lord Irwin could not give that assurance. The Congress leaders then proceeded to Lahore, where, on December 31, 1929, the Congress in full session adopted a resolution on complete independence². Lord Irwin's address to the Legislative Assembly³ in January, 1930, removed all chances of reconciliation. The great Civil Disobedience Movement of 1930-31 followed. The Congress naturally did not participate in the First Round Table Conference. The Gandhi-Irwin Agreement⁴ was concluded in March, 1931, and in August, 1931, Mahatma Gandhi agreed to represent the Congress in the Second Round Table Conference.]

Round
Table
Conference
not
representa-
tive of
Indian
people

The Working Committee of the Indian National Congress is not prepared to give any recognition to the proceedings of the so-called Round Table Conference between certain members of the British Parliament, the Indian Princes and individual Indians selected by the Government from among its supporters and not elected as their representatives by any section of the Indian people. The Committee holds that the British Government stands self-condemned

1 See p. 177.

2 See p. 186.

3 See pp. 177-179.

4 See the text of the Agreement in Sitaramya, *History of the Indian National Congress*, Vol. I, pp. 437-442.

by the methods it has employed of making a show of consulting representatives of India, while as a matter of fact it has been smothering her true voice by the incarceration of the real leaders of the Nation like Mahatma Gandhi and Pandit Jawaharlal Nehru, by ordinances and imprisonments and by lathi charges and firing on thousands of peaceful, unarmed and unresisting citizens engaged in the patriotic pursuit of winning freedom for their country by resorting to civil disobedience which, the Committee maintains, is a legitimate weapon in the hands of all oppressed nations.

British
policy of
repression

Civil
Disobedi-
ence

The Committee has carefully considered the declaration of the policy of the British Government made by Ramsay Macdonald, the Prime Minister of England, on behalf of the Cabinet on the 19th January, 1931, and is of opinion that it is too vague and general to justify any change in the policy of the Congress.

34. MAHATMA GANDHI AT THE ROUND TABLE CONFERENCE¹, 1931.

(Second Session; November 30, 1931)

..... I said at one of the preliminary meetings of the Federal Structure Committee that the Congress claimed to represent over 85 per cent. of the population of India, that is to say the dumb, toiling, semi-starved millions. But I went further: that the Congress claimed also by right of service to represent even the Princes, if they would padron my putting forth that claim, and the landed gentry, the educated class. I wish to repeat that claim and I wish this evening to emphasise that claim.

Congress
claims to
represent
dumb
millions,
even
Princes.

Congress
is not a
communal
organisa-
tion.

¹ See, C. P. Shukla, *When Gandhiji Returned Empty-handed*.

Mahatma Gandhi said, "I admit that I have come back empty-handed, but I am thankful that I have not lowered or in any way compromised the honour of the flag that was entrusted to me."

**Influence
of Congress
over the
masses**

All the other parties at this meeting represent sectional interests. Congress alone claims to represent the whole of India, all interests. It is no communal organisation; it is a determined enemy of communalism in any shape or form. Congress knows no distinction of race, colour or creed; its platform is universal. It may not always have lived up to the creed But the worst critic will have to recognise, as it has been recognised, that the National Congress of India is a daily growing organisation, that its message penetrates the remotest village of India; that on given occasions the Congress has been able to demonstrate its influence over and among these masses who inhabit 700,000 villages.

**Congress
is not one
of the
parties.**

And yet here I see that the Congress is treated as one of the parties. I do not mind it; I do not regard it as a calamity for the Congress; but I do regard it as a calamity for the purpose of doing the work for which we have gathered together here. I wish I could convince all the British public men, the British Ministers, that the Congress is capable of delivering the goods. The Congress is the only all-India-wide national organisation, bereft of any communal basis; that it does represent all the minorities which have lodged their claim here The Congress, I say, claims to represent all these minorities.

**Congress
represents
all
minorities.**

**Strength
of the
Congress**

What a great difference it would be today if this claim on behalf of the Congress was recognised. I feel that I have to state this claim with some degree of emphasis on behalf of peace, for the sake of achieving the purpose which is common to all of us I say so for this reason. Congress is a powerful organisation; Congress is an organisation which has been accused of running or desiring to run a parallel Government; and in a way I have endorsed the charge. If you could understand the working of the Congress, you would welcome an organisation which could run a parallel Government and show that it is possible for an organisation, voluntary, without any force at its command, to run the machinery of Government even under adverse circumstances. But

**British
distrust
of the
Congress**

no. Although you have invited the Congress, you reject its claim to represent the whole of India

The Congress represents the spirit of rebellion. I know that the word "rebellion" must not be whispered at a Conference which has been summoned in order to arrive at an agreed solution of India's troubles through negotiation. Speaker after speaker has got up and said that India should achieve her liberty through negotiation, by argument, and that it will be the greatest glory of Great Britain if Great Britain yields to India's demands by argument. But the Congress does not hold that view, quite. The Congress has an alternative which is unpleasant to you.

Congress
represents
spirit of
rebellion.

I heard several speakers . . . saying what a dire calamity it would be if India was fired with the spirit of lawlessness, rebellion, terrorism and so on the page of history is soiled red with the blood of those who have fought for freedom. I do not know an instance in which nations have attained their own without having to go through an incredible measure of travail. The dagger of the assassin, the poison bowl, the bullet of the rifleman, the spear and all those weapons and methods of destruction have been up to now used by what I consider blind lovers of liberty and freedom, and the historian has not condemned them. I hold no brief for the terrorists

Freedom
never won
except
through
violence

. . . . The Congress . . . comes upon the scene and devises a new method not known to history, namely, that of civil disobedience, and the Congress has been following that method up. But . . . I am told that that is a method that no Government in the world will tolerate. Well, of course the Governments may not tolerate; no Government has tolerated open rebellion. No Government may tolerate civil disobedience, but Governments have to succumb even to these forces And in India Lord Chelmsford had to do the same thing; the Governor of Bombay had to do the same thing in Borsad and Bardoli. I suggest to you, Prime Minister¹, it is too late today

New
method
discovered
by Congress
—Civil
Disobedi-
ence

¹ Mr. Ramsay MacDonald was the Chairman of the Conference, and he was in the chair when Mahatma Gandhi spoke.

**Honourable
settlement,
if possible ;
'ordeal of
fire,' if
necessary**

**Hearts of
British
people to
be touched
through
suffering**

**Sufferings
of India
in 1850-51**

**Congress
ready for
compromise
if 'real
liberty' is
available
for India**

to resist this I shall hope against hope. I shall strain every nerve to achieve an honourable settlement for my country if I can do so. I will put the millions of my countrymen and countrywomen and even children through this ordeal of fire. It can be a matter of no joy or comfort to me to lead them on again to a fight of that character, but if a further ordeal of fire has to be our lot, I shall approach that with the greatest joy and with the greatest consolation that I was doing what I felt to be right, and the country will have the additional satisfaction of knowing that it was not at least taking lives, it was giving lives; it was not making the British people directly suffer, it was suffering. Professor Gilbert Murray told me : You do not consider for one moment that we Englishmen do not suffer when thousands of your countrymen suffer, that we are so heartless? I do not think so. I do know that you will suffer; but I want you to suffer because I want to touch your hearts; and when your hearts have been touched will come the psychological moment for negotiation. Negotiation there always will be; and if this time I have travelled all these miles in order to enter upon negotiation, I thought that your countryman Lord Irwin had sufficiently tried us through his ordinances, that he had sufficient evidence that thousands of men and women of India and that thousands of children had suffered; and that, ordinance or no ordinance, *lathis* or no *lathis*, nothing would avail to stem the tide that was onrushing and to stem the passions that were rising in the breasts of the men and women who were thirsting for liberty.

Whilst there is yet a little sand left in the glass, I want you to understand what this Congress stands for. . . . I will count no sacrifice too great if by chance I can pull through an honourable settlement. You will find me always having the truest spirit of compromise if I can but fire you with the spirit that is working in the Congress, namely, that India must

have real liberty. Call it by any name you like: a rose will smell as sweet by any other name, but it must be the rose of liberty that I want and not the artificial product. If your mind and the Congress mind, the mind of this Conference and the mind of the British people, means the same thing by the same word, then you will find the amplest room for compromise, and you will find the Congress itself always in a compromising spirit. But so long as there is not that one mind, that one definition, not one implication for the same word that you and I and we may be using, so long there is no compromise possible. How can there be any compromise so long as we each one of us has a different definition for the same words that we may be using? It is impossible, Prime Minister. I want to suggest to you in all humility that it is utterly impossible then to find a meeting ground, to find a ground where you can apply the spirit of compromise. And I am very grieved to say that up to now I have not been able to discover a common definition for the terms that we have been exchanging during these weary weeks.

Compromise
not possible
if Indians
and
Englishmen
do not
agree
about
political
status
of India

* * * *

...It is friendship I crave. My business is not to throw overboard the slave-holder and tyrant. My philosophy forbids me to do so, and today the Congress has accepted that philosophy not as a creed, as it is to me, but as a policy, because the Congress believes that it is the right and best thing for India, a nation of 350 millions, to do. A nation of 350 million people does not need the dagger of the assassin, it does not need the poison bowl, it does not need the sword, the spear or the bullet. It needs simply a will of its own, an ability to say "No," and that nation is today learning to say "No."

India
developing
will to
be free

But what is it that that nation wants? Summarily, or at all to dismiss Englishmen? No. Its mission is today to convert Englishmen. I do not want to break the bond between England and India, but I do want to transform that bond. I want to transform that slavery into complete freedom for my

Bond
between
India and
England to
be reduced
from
slavery to
'complete
freedom'

country. Call it complete independence or whatever you like. I will not quarrel about that word, and even though my countrymen may dispute with me for having taken some other word I shall be able to bear down that opposition so long as the content of the word that you may suggest to me bears the same meaning. Hence I have times without number to urge upon your attention that the safeguards that have been suggested are completely unsatisfactory. They are not in the interests of India.

**Proposed
'safeguards'
unsatis-
factory**

Three experts¹ from the Federation of Commerce and Industry have... told you... how utterly impossible it is for any body of responsible Ministers to tackle the problem of administration when 80 per cent. of India's resources are mortgaged irretrievably. Better than I could have shown to you they have shown... what these financial safeguards mean for India. They mean the complete cramping of India. They have discussed at this table financial safeguards, but that includes necessarily the question of Defence and the question of the Army. Yet while I say that the safeguards are unsatisfactory as they have been presented... I do not hesitate to repeat, that the Congress is pledged to giving safeguards, endorsing safeguards which may be demonstrated to be in the interests of India.

**'Safeguards'
must be
in the real
interests
of India
and
England.**

At one of the sittings of the Federal Structure Committee I had no hesitation in amplifying the admission and saying that these safeguards must be also of benefit to Great Britain. I do not want safeguards which are merely beneficial to India and prejudicial to the real interests of Great Britain. The fancied interests of India will have to be sacrificed. The fancied interests of Great Britain will have to be sacrificed. The illegitimate interests of India will have to be sacrificed. The illegitimate interests of Great Britain will also have to be sacrificed. . . .

¹ Mr. G. D. Birla, Sir Purshotamdas Thakurdas, Mr. Jamal Muhammad.

... I shall be here as long as I am required because I do not want to revive civil disobedience. I want to turn the truce that was arrived at, at Delhi, into a permanent settlement. But for for peace heaven's sake give me, a frail man, 62 years gone, a little bit of a chance. Find a little corner for him and the organisation that he represents. You distrust that organisation though you may seemingly trust me. Do not for one moment differentiate me from the organisation of which I am but a drop in the ocean. I am no greater than the organisation to which I belong. I am infinitely smaller than that organisation; and if you find me a place, if you trust me, I invite you to trust the Congress also. Your trust in me otherwise is a broken reed. I have no authority save what I derived from the Congress. If you will work the Congress for all it is worth, then you will say good-bye to terrorism. . . . Today you have to fight the school of terrorists which is there with your disciplined and organised terrorism, because you will be blind to the facts or the writing on the wall. Will you not see the writing that these terrorists are writing with their blood? Will you not see that we do not want bread made of wheat, but we want bread of liberty; and without that liberty there are thousands today who are sworn not to give themselves peace or to give the country peace.

Anxiety
for peace

Appeal for
trusting
Congress

Lesson of
terrorism

I urge you then to read that writing on the wall. I ask you not to try the patience of a people known to be proverbially patient. We speak of the mild Hindu, and the Mussulman also by contact, good or evil, with the Hindu, has himself become mild. And that mention of the Mussulman brings me to the baffling problem of minorities. . . . I repeat what I used to say in India— . . . that without the problem of minorities being solved there is no Swaraj for India, there is no freedom for India. . . . I repeat. . . that so long as the wedge in the shape of foreign rule divides community from community and class from class, there will be no real living solution, there will be no living friendship between these communities.

Problem of
minorities

**Foreign
rule—
obstacle to
communal
unity**

It will be after all and at best a paper solution. But immediately you withdraw that wedge, the domestic ties, the domestic affections, the knowledge of common birth—do you suppose that all these will count for nothing?

**Communal
conflict
is 'coeval
with the
British
advent'.**

Were Hindus and Mussulmans and Sikhs always at war with one another when there was no British rule, when there was no English face seen there? We have chapter and verse given to us by Hindu historians and by Mussulman historians to say that we were living in comparative peace even then. And Hindus and Mussulmans in the villages are not even today quarrelling. In those days they were not known to quarrel at all. . . . This quarrel. . . is coeval with the British advent, and immediately this relationship, the unfortunate, artificial, unnatural relationship between Great Britain and India, is transformed into a natural relationship, when it becomes, if it does become, a voluntary partnership to be given up, to be dissolved at the will of either party, when it becomes that, you will find that Hindus, Mussulmans, Sikhs, Europeans, Anglo-Indians, Christians, Untouchables, will all live together as one man.

**Communal
conflict will
disappear
with the
end of
British
rule.**

**Appeal to
Princes**

I want to say one word about the Princes. . . . It is open to the Princes to give their terms on which they will join the Federation. I have appealed to them to make the path easy for those who inhabit the other part of India. . . . I think that if they accepted, no matter what they are, but some fundamental rights as the common property of all India, and if they accepted that position and allowed those rights to be tested by the court, which will be again of their own creation, and if they introduced elements—only elements—of representation on behalf of their subjects, I think that they would have gone a long way to conciliate their subjects. They would have gone a long way to show to the world and to show to the whole of India that they are also fired with a democratic spirit, that they do not want to remain

undiluted autocrats, but that they want to become constitutional monarchs, even as King George of Great Britain is.

35. WORK DONE BY THE ROUND TABLE CONFERENCE.

I. Speech of Sir Tej Bahadur Sapru, January 19, 1931.

... Now, during the last nine weeks what is it that we have witnessed emerging from this great Conference? There are three central ideas which have emerged. One, the higher, the nobler, loftier idea of an all-India federation, which has taken such a material shape, if I may say so, mainly because of the patriotic attitude adopted by the Indian Princes. The second important idea which, from the point of view of British India, is of the highest importance is the idea of responsibility at the Centre. Lord Reading... quoted from the speeches of Their Highnesses the Maharaja of Bikaner and the Nawab of Bhopal to show how, so far as the Princes were concerned, the only condition and the only terms on which they would come into the Federation was that there should be a responsible Government established. ... The third important idea which has emerged, and which... is an integral idea of all systems of responsible government, is that India must be prepared in the years to come to defend herself. ... It has been conceded, it has been acknowledged that we are entitled to have an Indian Sandhurst, and that it must be established to qualify Indians ultimately to take the responsibility for the defence of their own country. ...

Three
central
ideas :

(1) Federation

(2) Responsibility
at the
Centre

(3) Defence

II. Speech of Sir Samuel Hoare,¹ December 24, 1932.

... we have not been working in an empty void. We have not been attempting to create a situation in the air. We have not been, like the

¹ Secretary of State for India.

**'Reconciling
the claims
of three
partners'**

Abbe Sieyes in the years of the French Revolution, creating paper constitutions. From start to finish we have been circumscribed by the hard facts of the world as we find it. We have been confronted with the problem of reconciling the claims of three partners who have for many generations been united in an undertaking of far-reaching ramifications: Great Britain on the one hand, British India on the other, and Indian India on the other. The old Articles of Association were getting out of date; a new bond of union had to be found.

**Idea of
Federation
—"turning
point in
the course
of the
British
Empire"**

...the great achievement of the First Round Table Conference was to establish the fact for the first, and, I believe, for all time that the new bond must be the bond of an All-India Federation with the rights of each of the three parties effectively safeguarded. I believe that historians will say that this decision was a turning point in the course of the British Empire.

* * * * *

**Second
Round
Table Con-
ference**

The second Conference met in the face of very great difficulties. On the one hand we were in the throes of a world economic crisis; on the other we were faced with a change of Government and an impending General Election. . . .

**Communal
Award**

But there was a third difficulty. There was the difficulty of the communal question. There we found with the best will in the world at every stage last year we were brought up against the barrier of the communal difficulty. I think the real achievement of the Conference last year was to start on foot the whole series of enquiries that led to the Government's Communal Award and included amongst which were the invaluable Reports of the Committees that went to India in the New Year—Lord Lothian's Committee, Mr. Davidson's Committee and Lord Eustace Percy's Committee. I am quite sure that without the work done by those Committees and without the Communal Award, that reluctantly but none the less inevitably the Government had to make,

our deliberations this year would have been rendered impossible and infructuous.

I now come. . . . to the work of this Conference and I would venture to sum up the results in two sentences. I would say, first of all, we have clearly delimited the field upon which the future constitution is going to be built. In a much more detailed manner than in the last two years we have delimited the spheres of activity of the various parts of the constitution. Secondly, . . . we have I believe created an *esprit de corps* amongst all of us that is determined to see the building that is going to be reared upon the field that we marked out both complete in itself and completed at the earliest possible date. . . .

Third
Round
Table Con-
ference

36. THE COMMUNAL AWARD.

I. Statement of Mr. Ramsay MacDonald, December 1, 1931.

We must all realise that there stands in the way of progress, whether for the Provinces or the Centre, that formidable obstacle, the communal deadlock. I have never concealed from you my conviction that this is above all others a problem for you to settle by agreement amongst yourselves This (Round Table) Conference has twice essayed this task; twice it has failed

It is for
Indians to
solve the
communal
problem.

. . . . We shall soon find that our endeavours to proceed with our plans are held up (indeed they have been held up already) if you cannot present us with a settlement acceptable to all parties as the foundation upon which to build. In that event His Majesty's Government would be compelled to apply a provisional scheme, for they are determined that even this disability shall not be permitted to be a bar to progress. This would mean that His Majesty's Government would have to settle for you, not only your problem of representation, but also to decide as wisely and justly as possible what checks and balances the constitution is to contain to protect

Failure of
Indians to
solve
communal
problem
will compel
British
Government
to impose
its own
solution.

minorities from an unrestricted and tyrannical use of the democratic principle expressing itself solely through majority power. . . .

II. Mr. Ramsay MacDonald's Award, August 4, 1932.

**Prime
Minister's
Statement,
December 1,
1931**

1. In the statement made by the Prime Minister on December 1 last on behalf of His Majesty's Government at the close of the second session of the Round Table Conference which was immediately afterwards endorsed by both Houses of Parliament, it was made plain that if the communities in India were unable to reach a settlement acceptable to all parties on the communal question which the Conference had failed to solve, His Majesty's Government were determined that India's constitutional advance should not on that account be frustrated and that they would remove this obstacle by devising and applying themselves a provisional scheme.

**Task of
framing the
constitution
held up by
communal
problem**

2. On March 19 last His Majesty's Government, having been informed that the continued failure of the communities to reach an agreement was blocking the progress of the plans for the framing of a new constitution, stated that they were engaged upon a careful re-examination of the difficult and controversial questions which arose. They are now satisfied that without the decision of at least some aspects of the problem connected with the position of the minorities under the new constitution no further progress can be made with the framing of the constitution.

**Award
confined
to
Provinces
only**

3. His Majesty's Government have accordingly decided that they will include provisions to give effect to the scheme set out below in the proposals relating to the Indian constitution to be laid in due course before Parliament. The scope of this scheme is purposely confined to the arrangements to be made for representation of the British Indian communities in

the provincial legislatures, the consideration of representation in the legislature at the centre being deferred. The decision to limit the scope of the scheme implies no failure to realise that the framing of the constitution will necessitate decision of a number of other problems of great importance to the minorities, but has been taken in the hope that once a pronouncement has been made upon the basic questions of method and proportion of representation, the communities themselves may find it possible to arrive at a *modus vivendi* on their communal problems which have not as yet received the examination they require.

4. His Majesty's Government wish it to be most clearly understood that they themselves can be no parties to any negotiations which may be initiated with a view to revision of their decision and will not be prepared to give consideration to any representation aimed at securing a modification of it which is not supported by all parties affected. But they are most desirous to close no door to an agreed settlement, should such happily be forthcoming. If, therefore, before the new Government of India Act has passed into law they are satisfied that the communities who are concerned are mutually agreed upon a practicable alternative scheme either in respect of any one or more of the Governor's provinces or in respect of the whole of British India, they will be prepared to recommend to Parliament that the alternative should be substituted for the provisions now outlined.

Revision of Award not to be considered, unless accepted by all parties

* * * *

6. Election to the seats allotted to Mahomedan, European and Sikh constituencies will be by voters voting in separate communal electorates¹ covering between them the whole area of a province apart from any portions which may in special cases be excluded from the electoral area as 'backward'. Provisions will be made in the constitution itself to empower the

Separate communal electorates for Muslims, Europeans and Sikhs

¹ Separate communal electorates were provided also for Indian Christians, Anglo-Indians and women. 'Labour' seats were to be filled up from non-communal constituencies.

revision of this electoral arrangement (and other similar arrangements mentioned below) after 10 years, with the assent of the communities affected, for the ascertainment of which suitable means will be devised.

**General
seats**

7. All qualified electors who are not voters either in a Mahomedan, Sikh, Indian Christian, Anglo-Indian, or European constituency will be entitled to vote in a general constituency.

Marathas

8. Seven seats will be reserved for Mahrattas in certain selected plural number general constituencies in Bombay.

**Concessions
to
'Depressed
Classes'**

9. Members of the 'depressed classes' qualified to vote will vote in a general constituency. In view of the fact that for a considerable period these classes would be unlikely by this means alone to secure any adequate representation in the Legislature, a number of special seats will be assigned to them. These seats will be filled by election from special constituencies in which only members of 'the depressed classes' electorally qualified will be entitled to vote. Any person voting in such a special constituency will, as stated above, be also entitled to vote in a general constituency. It is intended that these constituencies should be formed in selected areas where the depressed classes are most numerous and that, except in Madras, they should not cover the whole area of a province. In Bengal, it seems possible that in some general constituencies the majority of votes will belong to the depressed classes. Accordingly, pending further investigation, no number has been fixed for the members to be returned from the special depressed class constituencies in that province. It is intended to secure that the depressed classes should obtain not less than 10 seats in the Bengal Legislature. . . .

Madras

Bengal

**Period of
continuance
of concess-
ions to
'Depressed
Classes'**

His Majesty's Government do not consider that these special 'depressed classes' constituencies' will be required for more than a limited time. They intend that the constitution shall provide that they

shall come to an end after 20 years, if they have not previously been abolished under the general powers of electoral revision referred to in Para 6.

* * * *

19. . . . His Majesty's Government consider that the composition of the upper house in a province should be such as not to disturb, in any essential, the balance between the communities resulting from the composition of the lower house.

Upper
Houses in
Provinces

20. His Majesty's Government. . . will. . . . when considering the composition (of the Central Legislature), pay full regard to the claims of all communities for an adequate representation therein.

Central
Legislature

III. Mr. Ramsay MacDonald's Statement.

We never wished to intervene in the communal controversies of India. . . . We have realised from the very first that any decision that we may make is likely, to begin with at any rate, to be criticised by every community from the point of view of its own complete demands. . . .

Our duty was plain. As the failure of the communities to agree amongst themselves has placed an almost insurmountable obstacle in the way of any constitutional development, it was incumbent upon Government to take action in accordance with the pledge that I gave on behalf of the Government at the Round Table Conference in response to repeated appeals from representative Indians and in accordance with the statement to British Parliament and approved by it. . . . We should be only too glad if, at any stage before the proposed Bill becomes law, the communities can reach an agreement amongst themselves. But guided by past experience, Government are convinced that no further negotiations will be of any advantage, and they can be no party to them. They will, however, be ready and willing to substitute for their scheme any scheme, whether in respect of any one or more of Governor's Provinces or in respect of the whole of British India that is

Why British
Government
issued
Communal
Award

British
Government
prepared to
modify
Communal
Award if all
affected
parties
agree

generally agreed to and accepted by all the parties affected.

Justification of continuation of separate electorates

In order to appreciate the Government's decision, it is necessary to remember the actual conditions in which it is being given. For many years past separate electorate . . . has been regarded by minority communities as an essential protection for their rights. . . . However much Government may have preferred an uniform system of joint electorates, they found it impossible to abolish safeguards to which minorities still attach vital importance. . . . Government have to face facts as they are, and must maintain this exceptional form of representation.

* * * *

Explanation and justification of the arrangement regarding Depressed Classes

Our main object in the case of the Depressed Classes has been, while securing to them the spokesmen of their own choice in the Legislatures of the Provinces where they are found in large numbers, at the same time to avoid electoral arrangements which would perpetuate their segregation. Consequently Depressed Class voters will vote in general Hindu constituencies and an elected member in such a constituency will be influenced by his responsibility to this section of the electorate, but for the next twenty years there will also be a number of special seats filled from special Depressed Class electorates in the areas where these voters chiefly prevail. The anomaly of giving certain members of the Depressed Classes two votes is abundantly justified by the urgent need of securing that their claims should be effectively expressed and the prospects of improving their actual condition promoted.

IV. The Poona Pact¹, September, 1932.

1. There shall be seats reserved for the Depressed Classes out of the General Electorate seats in the Provincial Legislatures as follows: Madras 30;

¹ The arrangement embodied in this Pact was accepted by the British Government in supersession of paragraph 9 of the Communal Award.

Bombay with Sind 15; Punjab 8; Bihar and Orissa 18; Central Provinces 20; Assam 7; Bengal¹ 30; United Provinces 20;—Total 148. These figures are based on the total strength of the Provincial Councils, announced in the Prime Minister's decision.

**Assignment
of seats in
different
Provinces**

2. Election to these seats shall be by joint electorates, subject, however, to the following procedure:—

All the members of the Depressed Classes registered in the general electoral roll in a constituency will form an electoral college, which will elect a panel of four candidates belonging to the Depressed Classes for each of such reserved seats, by the method of the single vote; the four persons getting the highest number of votes in such primary election shall be candidates for election by the general electorate.

**Procedure
of election**

3. Representation of the Depressed Classes in the Central Legislature shall likewise be on the principle of joint electorate and reserved seats by the method of primary election in the manner provided for in Clause 2 above, for their representation in the Provincial Legislatures.

**Central
Legislature**

4. In the Central Legislature 18 per cent. of the seats allotted to the general electorate for British India in the said Legislature shall be reserved for the Depressed Classes.

5. The system of primary election to a panel of candidates for election to the Central and Provincial Legislatures, as hereinbefore mentioned, shall come to an end after the first ten years, unless terminated sooner by mutual agreement

1 Lord Zetland (formerly Governor of Bengal) pointed out that under this Pact the 'Caste Hindus' of Bengal would be 'arbitrarily limited by the Statute to 70 seats in a Legislative Assembly of 250,' and remarked, "to restrict in this way the possible share in the government of the province, of the community which plays a predominant part in its intellectual and political life, seems to us to be both unwise and unfair."

**Injustice
to 'Caste
Hindus'
of Bengal**

37. INDIAN NATIONAL CONGRESS AND CONCESSIONS TO MUSLIMS.

I. Resolution, Madras Session, 1927.

This Congress resolves :

**Joint
electorates**

That in any future scheme of constitution, so far as representation in the various Legislatures is concerned, joint electorates in all the Provinces and the Central Legislature be constituted.

**Reservation
of seats
with
reciprocal
concessions
to
minorities**

That, with a view to give full assurances to the two great communities that their legitimate interests will be safeguarded in the Legislatures, such representation of the communities should be secured for the present, and if desired, by the reservation of seats in joint electorates on the basis of population in every province and in the Central Legislature, provided that reciprocal concessions in favour of minorities may be made by mutual agreement so as to give them representation in excess of the proportion of the number of seats to which they would be entitled on the population basis in any province or provinces, and the proportions so agreed upon shall be maintained in the representation of the two communities in the Central Legislature from the provinces.

**Reforms in
N. W. F. P.
and
Baluchistan
recommended**

That the proposal made by the Muslim leaders that reforms should be introduced in the N. W. F. Province and British Baluchistan on the same footing as in other provinces is, in the opinion of the Congress, a fair and reasonable one and should be given effect to

**Separation
of Sind**

That with regard to the proposal that Sind should be constituted into a separate province, this Congress is of opinion that the time has come for the redistribution of provinces on linguistic basis—a principle that has been adopted in the constitution of the Congress.

* * * *

**Safeguard
for liberty
of
conscience**

That, in the future constitution, liberty of conscience shall be guaranteed, and no Legislature, Central or Provincial, shall have power to make any laws interfering with liberty of conscience.

"Liberty of conscience" means liberty of belief and worship, freedom of religious observances and association and freedom to carry on religious education and propaganda with due regard to the feelings of others and without interfering with similar rights of others.

That no Bill, Resolution, Motion or Amendment regarding inter-communal matters shall be moved, discussed or passed in any Legislature, Central or Provincial, if a three-fourths majority of the members of either community affected thereby in that Legislature oppose the introduction, discussion or passing of such Bill, Resolution, Motion or Amendment.

"Inter-communal matters"

"Inter-communal matters" means matters agreed upon as such by a joint standing committee of both communities of the Hindu and Muslim members of the Legislature concerned, appointed at the commencement of every session of the Legislature.

II. Resolution of the Congress Working Committee,¹ July, 1931.

However much it may have failed in the realisation, the Congress has, from its very inception, set up pure nationalism as its ideal. It has endeavoured to break down communal barriers. The following Lahore resolution was the culminating point in its advance towards nationalism :—

Ideal of Congress :
"Pure Nationalism"

"In view of the lapse of the Nehru Report it is unnecessary to declare the policy of the Congress regarding communal questions, the Congress believing that in an independent India communal questions can only be solved on strictly national lines. But as the Sikhs in particular, and the Muslims and the other minorities in general, have expressed dissatisfaction over the solution of communal questions proposed in the Nehru Report, this Congress assures the Sikhs, the Muslims and other minorities that no

Lahore Resolution

¹ This resolution, embodied in a Memorandum dated October 28, 1931, was circulated by Mahatma Gaudhi to members of the Round Table Conference.

solution thereof in any future constitution will be acceptable to the Congress that does not give full satisfaction to the parties concerned."

**Scheme
prepared
by the
Working
Committee**

Hence the Congress is precluded from setting forth any communal solution of the communal problem. But at this critical juncture in the history of the Nation, it is felt that the Working Committee should suggest for adoption by the country a solution, though communal in appearance, yet as nearly national as possible and generally acceptable to the communities concerned. The Working Committee, therefore, after full and free discussion, unanimously passed the following scheme:—

**Funda-
mental
Rights**

1. (a) The article in the constitution relating to Fundamental Rights shall include a guarantee to the communities concerned of the protection of their cultures, languages, scripts, education, profession and practice of religion and religious endowments.

**Personal
Laws**

(b) Personal laws shall be protected by specific provisions to be embodied in the constitution.

(c) Protection of political and other rights of minority communities in the various Provinces shall be the concern and be within the jurisdiction of the Federal Government.

Franchise

2. The franchise shall be extended to all adult men and women

(*Note A.*—The Working Committee is committed to adult franchise by the Karachi resolution of the Congress and cannot entertain any alternative franchise. In view, however, of misapprehensions in some quarters, the Committee wishes to make it clear that in any event the franchise shall be uniform and so extensive as to reflect in the electoral roll the proportion in the population of every community.)

**Joint
Electorate**

3. (a) Joint electorates shall form the basis of representation in the future constitution of India.

(*Note B.*—Wherever possible the electoral circles shall be so determined as to enable every

community, if it so desires, to secure its proportionate share in the Legislature.)*

(b) That for the Hindus in Sind, the Muslims in Assam and the Sikhs in the Punjab and N.W.F.P. and for Hindus and Muslims in any Province where they are less than 25 per cent. of the population, seats shall be reserved in the Federal and Provincial Legislatures on the basis of population with the right to contest additional seats.

Reservation
of seats for
minorities

4. Appointments shall be made by non-party Public Service Commissions which shall prescribe the minimum qualifications, and which shall have due regard to the efficiency of the Public Service as well as to the principle of equal opportunity to all communities for a fair share in the Public Services of the country.

Public
Services

5. In the formation of Federal and Provincial Cabinets interests of minority communities should be recognised by convention.

Composi-
tion of
Cabinets

6. The N.W.F. Province and Baluchistan shall have the same form of government and administration as other Provinces.

N. W. F.
Baluchistan

7. Sind shall be constituted into a separate Province, provided that the people of Sind are prepared to bear the financial burden of the separated Province.

Sind

8. The future constitution of the country shall be federal. The residuary powers shall vest in the federating Units, unless, on further examination, it is found to be against the best interest of India.

Nature of
Federation

The Working Committee has adopted the foregoing scheme as a compromise between the proposals based on undiluted communalism and undiluted nationalism. Whilst on the one hand the Working Committee hopes that the whole Nation will endorse

Compromise
between
'undiluted
communal-
ism' and
'undiluted
nationalism'

* Note B is not part of the scheme but has been added by me as not being inconsistent with the scheme.

(Intld.) M. K. G.

the scheme, on the other, it assures those who take extreme views and cannot adopt it, that the Committee will gladly, as it is bound to by the Lahore resolution, accept without reservation any other scheme, if it commands the acceptance of all the parties concerned.

III. Resolution of the Congress Working Committee, June, 1934.

**White
Paper not
acceptable**

The White Paper in no way expresses the will of the people of India, has been more or less condemned by almost all the Indian political parties, and falls far short of the Congress goal if it does not retard the progress towards it. The only satisfactory alternative to the White Paper is a constitution drawn up by a Constituent Assembly elected on the basis of adult suffrage or as near it as possible, with the power, if necessary, to the important minorities to have their representatives elected by the electors belonging to such minorities.

**Communal
Award
lapsed**

The White Paper lapsing, the Communal Award must lapse automatically. Among other things it will be the duty of the Constituent Assembly to determine the method of representation of important minorities and make provision for otherwise safeguarding their interests.

**Congress
can neither
accept nor
reject
Communal
Award.**

Since, however, the different communities in the country are sharply divided on the question of the Communal Award, it is necessary to define the Congress attitude towards it. The Congress claims to represent equally all the communities composing the Indian nation, and, therefore, in view of the division of opinion, can neither accept nor reject the Communal Award as long as the division of opinion lasts.

At the same time it is necessary to redeclare the policy of the Congress on the communal question :

No solution that is not purely national can be propounded by the Congress. But the Congress is pledged to accept any solution falling short of the national, which is agreed to by all the parties con-

cerned and, conversely, to reject any solution which is not agreed to by any of the said parties.

Judged by the national standard the Communal Award is wholly unsatisfactory, besides being open to serious objections on other grounds.

Communal Award 'wholly unsatisfactory'

It is, however, obvious that the only way to prevent untoward consequences of the Communal Award is to explore ways and means of arriving at an agreed solution and not by any appeal on the essentially domestic question to the British Government or any other outside authority.

IV. Resolution of the All-India Congress Committee, Bombay, August, 1936.

The communal decision, which forms part of the new Act, has led to much controversy and the Congress attitude towards it has been misunderstood by some people. The rejection in its entirety of the new Act by the Congress inevitably involves the rejection of the communal decision. Even apart from the Act as a whole, the communal decision is wholly unacceptable as being inconsistent with independence and the principle of democracy, it encourages dissipated and disruptive tendencies, hinders the normal growth and consideration of economic and social questions, is a barrier to national progress and strikes at the root of national unity. No community or group in India profits by it in any real sense, for the larger injury caused by it to all outweighs the petty benefits that some have received. Ultimately it probably injures most those groups whom it is meant to favour. The only party that profits by it is the third party which rules and exploits us.

Rejection of Act of 1935 implies rejection of Communal Award.

Criticism of Communal Award

The attitude of the Congress is, therefore, not one of indifference or neutrality. It disapproves strongly of the communal decision and would like to end it. But the Congress has repeatedly laid stress on the fact that a satisfactory solution of the communal question can come only through the good will and co-operation of the principal communities.

Communal question can be solved only through good will and co-operation of principal communities.

concerned. An attempt by one group to get some communal favour from the British Government at the expense of another group results in an increase of communal tension and the exploitation of both groups by the Government. Such a policy is hardly in keeping with the dignity of Indian Nationalism; it does not fit in with the struggle of independence; it does not pay either party in the long run; it side-tracks the main issue.

One community should not try to change Communal Award in face of opposition of another community.

The Congress, therefore, holds that the right way to deal with the situation created by communal decision is to intensify our struggle for independence and, at the same time, to seek a common basis for an agreed solution which helps to strengthen the unity of India. The effort of one community only to change the decision in the face of opposition of another community might well result in confirming and consolidating that decision, for conflict between the two produces the very situation which gives Government a chance of enforcing such a decision. The Congress thus is of opinion that such one-sided agitation can bear no useful result.

V. Resolution of the Congress Working Committee, October, 1937.

Congress protects rights of minorities.

The Congress has solemnly and repeatedly declared its policy in regard to the rights of the minorities in India and has stated that it considers it its duty to protect these rights and ensure the widest possible scope for the development of these minorities and their participation in the fullest measure in the political, economic and cultural life of the nation. The objective of the Congress is an independent and united India where no class or group or majority or minority may exploit another to its own advantage, and where all the elements in the nation may co-operate together for the common good and the advancement of the people of India. . . .

Co-operation of communities for common good

. . . . The Congress is opposed to this decision (i.e., Communal Award) as it is anti-national, anti-democratic and is a barrier to Indian freedom and the

development of Indian unity. Nevertheless the Congress has declared that a change in or suppression of the communal decision should only be brought about by the mutual agreement of the parties concerned. The Congress has always welcomed and is prepared to take advantage of any opportunity to bring about such a change by mutual agreement.

Communal Award not to be changed except by mutual agreement

38. JOINT PARLIAMENTARY COMMITTEE ON INDIAN FEDERATION.

[The third session of the Round Table Conference (November—December, 1932) was not attended either by the Congress or by the British Labour Party. In March, 1933, the British Government published a *White Paper* containing a set of proposals for reform which were to be submitted to a Joint Select Committee of Parliament for examination and report. "In essence the majority of the Committee accepted the Governmental proposals, but emphasized still more the necessity of safeguards . . . " The *Report* was published in October, 1934.]

26. If the establishment of Provincial Autonomy marks, not so much a new departure, as the next stage in a path which India has long been treading, it is the more necessary that, on entering this stage, we should pause to take stock of the direction in which we have been moving. We have spoken of unity as perhaps the greatest gift which British rule has conferred on India; but in transferring so many of the powers of government to the Provinces, and in encouraging them to develop a vigorous and independent political life of their own, we have been running the inevitable risk of weakening or even destroying that unity. Provincial Autonomy is, in fact, an inconceivable policy unless it is accompanied by such an adaptation of the structure of the Central Legislature as will bind these autonomous units together. In other words, the necessary consequence of Provincial Autonomy in British India is a British-India Federal Assembly. In recent discussions, the word "federation" has become identified with the proposals for an All-India Federation and for the establish-

Unity must be maintained.

Provincial Autonomy requires readjustment at Centre.

**Simon
Commission
on Central
Legislature**

ment, in the common phrase, of "responsibility at the Centre". . . . But federation is, of course, simply the method by which a number of Governments, autonomous in their own sphere, are combined in a single State. A Federal Legislature capable of performing this function need not necessarily control the Federal Executive through responsible Ministers chosen from among its members; indeed the Central Government of a purely British-India Federation could not, in our opinion, be appropriately framed on this model. But a Federal Legislature must be constituted on different lines from the Central Legislature of a unitary State. The Statutory Commission realised this truth and proposed a new form of Legislature at the Centre, specifically designed to secure the essential unity of British India. We have devoted particular attention to the form of the Central Legislature and shall have to recommend the substitution of an alternative scheme for the White Paper proposals.

**No historical
precedent for
Indian
Federation**

**Necessity
for guard-
ing against
centrifugal
tendencies**

27. Of course, in thus converting a unitary State into a Federation we should be taking a step for which there is no exact historical precedent. Federations have commonly resulted from an agreement between independent or, at least, autonomous Governments, surrendering a defined part of their sovereignty or autonomy to a new central organism. At the present moment, the British Indian Provinces are not even autonomous, for they are subject to both the administrative and the legislative control of the Government of India, and such authority as they exercise has in the main been devolved upon them under a statutory rule-making power by the Governor-General in Council. We are faced, therefore, with the necessity of creating autonomous units and combining them into a federation by one and the same act. But it is obvious that we have no alternative. To create autonomous units without any corresponding adaptation of the existing Central Legislature would be, as the Statutory Commission saw, to give full play to the powerful centrifugal

forces of Provincial Autonomy without any attempt to counteract them and to ensure the continued unity of India. We obviously could not take the responsibility of recommending to Parliament a course fraught with such serious risks. If Parliament should decide to create an All-India Federation, the actual establishment of the new Central Legislature may without danger be deferred for so long as may be necessary to complete arrangements for bringing the representatives of the States into it; but the form of that Legislature must be defined in the Constitution Act itself.

28. This brings us to the further proposal laid before us that the Constitution Act should also determine the conditions upon which an All-India Federation is to be established, which includes the Indian States. This is a separate operation, which may proceed simultaneously with the introduction of Provincial Autonomy and the reconstitution of the Central Legislature, but which must be carried out by different methods and raises quite distinct issues of policy. We will leave questions of method to be considered in the body of our Report, but the issues of policy must be briefly discussed here.

29. The Statutory Commission looked forward to the ultimate establishment of a Federation of Indian States and Provinces, and they recommended that, until this ideal could be realised, policies affecting British India and the States should be discussed between the parties in a consultative, but not legislative, Council of Greater India, consisting of representatives drawn from the States and the British Indian Legislature. The Commission did not anticipate that the Princes would be willing to enter an All-India Federation without some preliminary experience of joint deliberation on matters of common concern, and no doubt the Commission saw in this procedure the means of overcoming, by a process of trial and error, the difficulties of establishing an All-India Federation. These difficulties are obvious and, again, they are quite distinct from the difficulties in-

**Question
of Indian
States**

**Difficulties
of creating
a Federation
composed of
disparate
units :**

**(1) States
'wholly
different
in status
and
character'
from British
Provinces**

volved in the constitution of a British-India Federation. The main difficulties are two: that the Indian States are wholly different in status and character from the Provinces of British-India, and that they are not prepared to federate on the same terms as it is proposed to apply to the Provinces. On the first point, the Indian States, unlike the British-India Provinces, possess sovereignty in various degrees and they are, broadly speaking, under a system of personal government. Their accession to a Federation cannot, therefore, take place otherwise than by the voluntary act of the Ruler of each State, and after accession the representatives of the acceding State in the Federal Legislature will be nominated by the Ruler and its subjects will continue to owe allegiance to him. On the second point, the Rulers have made it clear that, while they are willing to consider federation now with the Provinces of British India on certain terms, they could not, as sovereign States, agree to the exercise by a Federal Government in relation to them of a range of powers identical in all respects with those which that Government will exercise in relation to the Provinces on whom autonomy has yet to be conferred. We have here an obvious anomaly: a Federation composed of disparate constituent units, in which the powers and authority of the Central Government will differ as between one constituent unit and another.

**(2) States
not willing
to enter
Federation
on same
terms as
British
Provinces**

**Unity of
India en-
dangered
without a
constitu-
tional rela-
tionship
between
States and
British
India**

30. Against these undoubted difficulties, we have to place one great consideration of substance, which appears to us to outweigh the disadvantages of these anomalies. The unity of India on which we have laid so much stress is dangerously imperfect so long as the Indian States have no constitutional relationship with British India. It is this fact, surely, that has influenced the Rulers of Indian States in their recent policy. They remain perfectly free to continue, if they so choose, in the political isolation which has characterised their history since the establishment of the British connection. But they have, it appears, become keenly conscious of the imperfec-

tions of the Indian polity as it exists to-day. A completely united Indian polity cannot, it is true, be established either now or, so far as human foresight can extend, at any time. In most respects, the anomalies to which we have referred are the necessary incidents, not merely of the introduction of an All-India Federation at this moment, but of its introduction at any time in the future. So far as we are aware, no section of opinion in this country or in British India is prepared to forego an All-India Federation as an ultimate aim of British policy. Certainly, the Statutory Commission was not prepared to do so, and it is the ideal indicated in their report which has since won so much support among the Indian Princes. The question for decision is whether the measure of unity which can be achieved by an All-India Federation, imperfect though it may be, is likely to confer added strength, stability and prosperity on India as a whole—that is to say, both on the States and on British India. To this question, there can, we think, be only one answer—an affirmative one; and that answer does not rest only, or even chiefly, on the kind of general considerations which naturally appeal most strongly to the people of this country. From their point of view it is evident enough that Ruling Princes who in the past have been the firm friends of British rule have sometimes felt their friendship tried by decisions of the Government of India running counter to what they believed to be the interests of their States and peoples. Ruling Princes, however, as members of a Federation, may be expected to give steadfast support to a strong and stable Central Government, and to become helpful collaborators in policies which they have sometimes in the past been inclined to criticise or even obstruct. But an even stronger, and a much more concrete, argument is to be found in the existing economic condition of India.

Will
Federation
give India
'added
strength,
stability
and pros-
perity'?

31. The existing arrangements under which economic policies, vitally affecting the interests of India as a whole, have to be formulated and carried

**Economic
ties between
States and
British
India**

cut are being daily put to an ever-increasing strain, as the economic life of India develops. For instance, any imposition of internal indirect taxation in British India involves, with few exceptions, the conclusion of agreements with a number of States for concurrent taxation within their frontiers, or, in default of such agreement, the establishment of some system of internal customs duties—an impossible alternative even if it were not precluded by the terms of the Crown's treaties with some States. Worse than this, India may be said even to lack a general customs system uniformly applied throughout the sub-continent. On the one hand, with certain exceptions, the States are free themselves to impose internal customs duties, which cannot but obstruct the flow of trade. Even at the maritime ports situated in the States, the administration of the tariffs is imperfectly co-ordinated with that of the British India ports, while the separate rights of the States in these respects are safeguarded by long-standing treaties or usage acknowledged by the Crown. On the other hand, tariff policies, in which every part of India is interested, are laid down by a Government of India and British-India Legislature in which no Indian State has a voice, though the States constitute only slightly less than half the area and one-fourth of the population of India. Even where the Government of India has adequate powers to impose internal indirect taxation or to control economic development, as in the cases of salt and opium, the use of those powers has caused much friction and has often left behind it, in the States, a sense of injustice. Moreover, a common company law for India, a common banking law, a common body of legislation on copyright and trade marks, a common system of communications, are alike impossible. Conditions such as these, which have caused trouble and uneasiness in the past, are already becoming, and must in the future increasingly become, intolerable as industrial and commercial development spreads from British India to the States. On all these points the Federation now contemplated would have power to adopt a common policy. That

**Difficulties
created by
lack of
common
economic
policy for
the whole
of India**

**Federation
may adopt
common
economic
policy for
British
India and
States.**

common policy would be subject, no doubt, to some reservation of special treaty rights by certain States and, in the States generally, its enforcement would in many respects rest with officers appointed by the State Rulers; but, even so modified, it would mark a long step from confusion towards order. The rights of the States to impose internal customs duties cannot be abolished but . . . moderation in the use of them can be made a condition of federation. In these times, when experience is daily proving the need for the close co-ordination of policies, we cannot believe that Parliament, while introducing a new measure of decentralisation in British India, would be wise to neglect the opportunity now offered to it of establishing a new centre of common action for India as a whole.

32 An All-India Federation thus presents solid advantages from the point of view alike of His Majesty's Government, of British India, and of the Indian States. But the attraction of the idea to the States clearly depends on the fulfilment of one condition: that, in acceding to the Federation, they should be assured of a real voice in the determination of its policy. The Princes have, therefore, stated clearly in their declaration that they are willing now to enter an All-India Federation, but only if the Federal Government is a responsible and not an irresponsible Government.

**Utility of
Federation**

**The Indian
States and
responsi-
bility at
the Centre**

* * * * *

153. It is clear that, in any new Constitution in which autonomous Provinces are to be federally united under the Crown, not only can the Provinces no longer derive their powers and authorities from devolution by the Central Government, but the Central Government cannot continue to be an agent of the Secretary of State. Both must derive their powers and authority from a direct grant by the Crown. We apprehend, therefore, that the legal basis of a reconstituted Government of India must be, first, the resumption into the hands of the Crown of all rights, authority and jurisdiction in and over

**Legal basis
of federal
constitution**

the territories of British India, whether they are at present vested in the Secretary of State, the Governor-General in Council, or in the Provincial Governments and Administrations; and second, their redistribution in such manner as the Act may prescribe between the Central Government on the one hand and the Provinces on the other. A Federation of which the British Indian Provinces are the constituent units will thereby be brought in existence.

**Accession
of States to
Federation
must be a
voluntary
act.**

154. The rights, authority and jurisdiction which will thus be conferred by the Crown on the new Central Government will not extend to any Indian State. It follows that the accession of an Indian State to the Federation cannot take place otherwise than by the voluntary act of its Ruler. The Constitution Act cannot itself make any Indian State a member of the Federation; it will only prescribe a method whereby the State may accede and the legal consequences which will flow from the accession. There can be no question of compulsion so far as the States are concerned. Their Rulers can enter or stand aside from the Federation as they think fit. They have announced their willingness to consider federation with the Provinces of British India on certain terms; but, whereas the powers of the new Central Government in relation to the Provinces will cover a wide field and will be identical in the case of each Province, the Princes have intimated that they are not prepared to agree to the exercise by a Federal Government for the purpose of the Federation of an identical range of powers in relation to themselves.

39. JOINT PARLIAMENTARY COMMITTEE ON PROVINCIAL AUTONOMY.

**Definition
of
Provincial
Autonomy**

48. The scheme of Provincial Autonomy, as we understand it, is one whereby each of the Governors' Provinces will possess an Executive and a Legislature having exclusive authority within the Province in a precisely defined sphere, and in that exclusively provincial sphere broadly free from control by the

Central Government and Legislature. This we conceive to be the essence of Provincial Autonomy, though no doubt there is room for wide differences of opinion with regard to the manner in which that exclusive authority is to be exercised. It represents a fundamental departure from the present system, under which the Provincial Governments exercise a devolved and not an original authority. The Act of 1919 and the Devolution Rules made under it, by earmarking certain subjects as "Provincial subjects", created indeed a sphere within which responsibility for the functions of Government rests primarily upon the Provincial authorities; but that responsibility is not an exclusive one, since the Governor-General in Council and the Central Legislature still exercise an extensive authority throughout the whole of the Provinces. Under the proposals in the White Paper, the Central Government and Legislature would, generally speaking, cease to possess in the Governors' Provinces any legal power or authority with respect to any matter falling within the exclusive Provincial sphere, though . . . the Governor-General in virtue of his power of supervising the Governors will have authority to secure compliance in certain respects with directions which he may find it necessary to give

Act of 1919

White Paper

19. "The Provinces are the domain," wrote the authors of the Montagu-Chelmsford Report, "in which the earlier steps towards the progressive realisation of responsible government should be taken. Some measure of responsibility should be given at once, and our aim is to give complete responsibility as soon as conditions permit." Their intention was to give an independent life to the organisms which would in future form the members of a British India Federation, an ideal at that time not within measurable distance. To-day, so rapid has been the march of events since 1919, we are discussing not only a Federation of British India, but an All-India Federation; and we could not ourselves contemplate such a Federation, whether it comes about in the

Montagu-Chelmsford Report

**Joint Com-
mittee
agrees with
Simon
Commission**

immediate or more distant future, which in its British Indian aspect is composed of other than autonomous units, independent within their own sphere of any Central control. We have arrived, therefore, at the same conclusion on this subject as the Statutory Commission, and substantially on the same grounds. Of all the proposals in the White Paper, Provincial Autonomy has received the greatest measure of support on every side. The economic, geographical, and racial differences between the Provinces on the one hand and the sense of provincial individuality on the other, have greatly impressed us. The vast distances of India and the increasing complexity of modern government are strong additional arguments in favour of the completion of the process begun in 1919, and of a development in which the life of each Province can find vigorous and adequate expression, free from interference by a remote Central Government. . . .

**Arguments
in favour of
Provincial
Autonomy**

40. JOINT PARLIAMENTARY COMMITTEE ON RELATIONS BETWEEN GOVERNOR AND MINISTERS.

**Governor's
'discretion'
and 'Special
Responsibilities'**

71 . . . in the present Government of India Act, there is a provision which requires the Governor to be "guided by" the advice of his Ministers in all matters relating to transferred subjects, unless he sees sufficient cause to dissent from their opinion. The Act will commit certain matters to the Governor's sole discretion, such, for instance, as his power of veto over legislation and the regulation of matters relating to the administration of excluded areas. It will also contain a declaration that certain special responsibilities are to rest upon the Governor. For the rest, it will provide that the Governor shall have a Council of Ministers to aid and advise him, but his relations with his Ministers are left to be determined wholly by the Instrument of Instructions. We agree that it is desirable that the Governor's special responsibilities, over and above the matters which are committed to his sole discretion, should be laid down in the Act itself rather than that they

**Instrument
of
Instructions**

should be left to be enumerated thereafter in the Instrument of Instructions. In the first place, Indian opinion will thereby be assured that the discretionary powers of the Governor to dissent from his Ministers' advice is not intended to be unlimited; and, secondly, the right will thereby be secured to Parliament to consider and debate the scope of the Governor's powers during the passage of the Constitution Bill itself. On the other hand, we agree that it would be undesirable to seek to define the Governor's relations with his Ministers by imposing a statutory obligation upon him to be guided by their advice, since to do so would be to convert a constitutional convention into a rule of law and thus, perhaps, to bring it within the cognisance of the courts. We do not, however, think that the inherent legal power of the Governor to act upon his own responsibility is set forth with sufficient clearness in the White Paper, and we recommend that it should be more explicitly defined.

**Inherent
legal power
of the
Governor'**

75. We do not understand the declaration of a special responsibility with respect to a particular matter to mean or even to suggest that on every occasion when a question relating to that matter comes up for decision the decision is to be that of the Governor to the exclusion of his Ministers. In so sense does it define a sphere from which the action of Ministers is excluded. In our view, it does no more than indicate a sphere of action in which it will be constitutionally proper for the Governor, after receiving Ministerial advice, to signify his dissent from it and even to act in opposition to it, if in his own unflinched judgment he is of opinion that the circumstances of the case so require. Nor do we anticipate that the occasions on which a Governor will find it necessary so to dissent or to act in opposition to the advice given to him are in normal circumstances likely to be numerous; and certainly they will not be, as some appear to think, of daily occurrence. We leave for later consideration¹ the

**Meaning
of 'Special
Responsi-
bilities'**

1. See paras 78-84 of the *Report*.

'Special Responsibilities' should not be meticulously defined.

list of the special responsibilities themselves and the manner in which they are defined; but, if we have rightly appreciated their place in the constitution, it appears to us undesirable to seek to define them with meticulous accuracy, though we consider that their general scope and purpose should be set out with sufficient precision.

41. DEBATE IN INDIAN LEGISLATIVE ASSEMBLY ON REPORT OF JOINT PARLIAMENTARY COMMITTEE, 1935.

[On February 4, 1935, Sir N. N. Sircar, Law Member in the Governor General's Executive Council, moved: "That the Report of the Joint Committee on Indian Constitutional Reforms be taken into consideration". The following amendment moved on behalf of the Congress Party was rejected (Ayes—61. Noes 72) : "This Assembly is of opinion that the proposed scheme of Constitution for the Government of India is conceived in a spirit of imperialist domination and economic exploitation and transfers no real power to the people of India and that the acceptance of such a constitution will retard instead of furthering the political and economic progress of India and recommends to the Governor-General in Council to advise His Majesty's Government not to proceed with any legislation based on the said scheme." Mr. Jinnah moved another amendment consisting of three parts :

"1. That this Assembly accepts the Communal Award, so far as it goes, until a substitute is agreed upon by the various communities concerned

2. As regards the Scheme of Provincial Governments, this House is of opinion that it is most unsatisfactory and disappointing, inasmuch as it includes various objectionable features, particularly the establishment of Second Chambers, the extraordinary and special powers of the Governors, provisions relating to Police rules, Secret Service and Intelligence Departments, which render the real control and responsibility of the Executive and Legislature ineffective and, therefore, unless these objectionable features are removed, it will not satisfy any section of Indian opinion.

3. With respect to the scheme of the Central Government, called "All-India Federation", this House is clearly of opinion that it is fundamentally bad and totally unacceptable to the people of British India and, therefore, recommends to the Government of India to advise His Majesty's Government not to proceed with any legislation based on this scheme and urges that immediate efforts should be made

to consider how best to establish in British India alone a real and complete responsible government and with that view take steps to review the whole position in consultation with Indian opinion without delay."

To the first part the Congress Party moved the following amendment : "As regards the Communal Award, this Assembly deems it most conducive to national harmony and to a solution by mutual agreement of the problems involved that it should refrain from expressing any opinion at the present juncture either accepting or rejecting the Communal Award". This amendment was negatived (Ayes—44, Noes—84). The first part of Mr. Jinnah's amendment was then adopted (Ayes—88, Noes—15); the Congress Party remained neutral.

The second and third parts of Mr. Jinnah's amendment were adopted with the support of the Congress Party (Ayes—74, Noes—58). }

I. Speech of Mr. Bhulabhai J. Desai,¹

February 4, 1935.

. I hold that religion should have the last place in creating any diversity in the matter of Nationality. I have always held, Sir, with a faith which nothing has shaken, that religion is a matter between man and God, and that it cannot be debased for purposes of the division of spoils of a mundane nature, . . . and that if religion is ever used for the purpose of dividing man from man, dividing Indian from Indian, in order only that political domination may be maintained, sustained or confirmed, I hope and trust that every single Indian present here, whatever may be his faith or creed, will give a unanimous lie to that proposition, and that he will not allow himself to be, or used as an instrument of our own subjection. It is for this reason, Sir, that the Congress has taken up the attitude that it has done towards the Communal Award. I am quite certain that, apart from any question of just and adequate protection of minorities, no difference can ever possibly exist between the political or economic interests either of a Hindu or of a Mussalman, a Sikh or a Christian, a Parsi or a Buddhist.

Justification
of Congress
attitude
towards
Communal
Award

¹ Leader of the Congress Party in the Assembly.

"Acquisition first and distribution next"

. . . . I stand up before this House, therefore, to say that, in so far as that communal decision is concerned, the position that we take is the only tenable position inasmuch as we claim that we do not look at this issue from the point of view of a section of the people who profess one religion rather than another. We look upon it, we choose to look upon it from a broad national point of view. . . . Let us, therefore, not dispute before we acquire Sir, we begin to dispute about the distribution of what we have not ! Shall we not place the acquisition first and the distribution next . . . ?

Coming, Sir, to the next part of the amendments there at all events all controversy seems to have been laid at rest. The Honourable the Mover¹ said . . . that there is little or no difference between the position for which I stand and the position of my friend, Mr. Mahomed Ali Jinnah . . . all of us are agreed for one reason or another and on one ground or another, for more or for less, that the Constitution, as offered, is not acceptable to the bulk of the people of India if not to the entire population of India.

* * * * *

Constitution not acceptable to people of India

We are no longer in a stage of tutelage, no longer in a stage of spoon-feeding, no longer in a stage where we admit that we shall go step by step and very often two steps backwards and, therefore, we shall never move forwards at all. Therefore it is, that the first test which I shall bring to bear . . . is the test of the reality and the integrity of the Constitution as a whole. The second test which I shall apply is whether there is any real transference of power to the representatives of the people Taking the two tests, Sir, I begin with what is called the Central Federation that is proposed. . . . I do not propose to refer, except perhaps just in passing, to the part that the Indian Princes will share in the making of the Federation It appears . . . that the Princes do not seem to be very

Two tests to be applied to proposed constitution

much impressed with the utility of this Federation. They say, irrespective of their own advantage or disadvantage, the British Indian does not seem to look upon them as convenient or adequate partners of such a nature that we can be clubbed together. They seem to think that there is a necessary inconsistency between an absolute monarchy or, in the Greek sense, despotism which they represent and the progressive State which British India must necessarily represent. However, we leave them to their judgments After all, there are five aspects of every Government worth the name. (a) The right of external and internal defence and all measures for that purpose; (b) the right to control our external relations; (c) the right to control our currency and exchange; (d) the right to control our fiscal policy; and (e) the day to day administration of the land. . . . Looking at it in that outline, by a single stroke of the pen, call it reserved subjects or by any other name, what is it that is taken away and what is it that is left? You shall have nothing to do with external affairs. You shall have nothing to do with defence. You shall have nothing to do . . . with your currency and exchange, for, indeed, the Reserve Bank Bill just passed has a further reservation in the Constitution that no legislation may be undertaken with a view to substantially alter the provisions of that Act except with the consent of the Governor-General. It also appears from the Bill, as it is drafted, that our greatest national asset, to wit, the State Railways of India, are going almost to share a similar fate, in so far as we have or can exercise any authority or power of control. That leaves us still with the "discretionary powers", the "special responsibilities", the veto which exists as a representative of the Crown, but more than that, the positive power of individual personal legislation, the positive power of enthroning himself on the very throne of India itself as an absolute and sole dictator. This is the Central Constitution. Added to that, you have two chambers, including elements which time does not permit me to examine in detail. The fact,

**Attitude of
Princes to
Federal
Scheme**

**Criticism of
Federal
Scheme**

"There is no real power conferred in the Centre".

therefore, remains that there is no real power conferred in the Centre. With what sense of responsibility, with what sense of honour and with what sense of self-respect and with what hope we could look forward to the future under such a Constitution? . . .

Criticism of Provincial Scheme

Coming to the Provinces, . . . there is little to choose between the two. India, I think it is confessed even by those who sit on the other side, has reached the uttermost capacity of taxation. Therefore, there is no more money to be found, and yet we are told, that for this great and honoured institution that is coming into being, we shall have to find some 20 crores more for the purpose of feeding this white elephant; and, added to that, when all the sources of revenue have dried up, you say we have responsible Ministers. They will all be elected from among the elected representatives, but you put the Indians into this unfortunate and difficult position, that they are between the devil and the deep sea . . .

"Unfortunate and difficult position" of Provincial Minister

between the extraordinary powers placed in the hands of the Governor on the one hand and the great Services . . . , the Services who ought to be their ministerial subordinates but who are going to have a back-door influence against those under whom they are going to serve; between the protected Services . . . and the unprotected Governor with all his powers, and with no money and resources at his disposal for any nation-building purposes. Why offer this mockery of what is called provincial autonomy? . . .

II. Speech of Mr. M. A. Jinnah, February 7, 1935.

Muslims not satisfied with Communal Award

. . . My amendment accepts the Communal Award,—and, remember, until when, until a substitute is agreed upon between the communities concerned. Now, it may be that our Hindu friends are not satisfied with the Communal Award, but at the same time I can also tell the House that my Muhammadan friends are not satisfied with it either, because it does not meet their full demand. And, speaking for myself, personally, I am not satisfied

with the Communal Award, and, again, speaking as an individual, my self-respect will never be satisfied until we produce our own scheme I accept it, because we have done everything we could so far to come to a settlement, though, so far, we have not been able to come to a settlement, and, therefore, whether I like it or whether I do not like it, I accept it, because unless I accept that, no scheme of Constitution is possible. Therefore, please stop this talk of rejection now. For the time being let it stand. I entirely reciprocate every sentiment which the Honourable the Leader of the Opposition¹ expressed, and I agree with him, that religion should not be allowed to come into politics. . . but I ask him to consider this,—is this a question of religion purely? . . . No sir, this is a question of minorities and it is a political issue . . . Now, what are the minorities? Minorities mean a combination of things. It may be that a minority has a different religion from the other citizens of a country. Their language may be different, their race may be different, their culture may be different, and the combination of all these various elements—religion, culture, race, language, art, music and so forth makes the minority a separate entity in the State, and that separate entity as an entity wants safeguards. Surely, therefore, we must face this question as a political problem, we must solve it and not evade it.

Why Communal Award is accepted.

Communal Award involves a political, not a religious, problem.

Definition of 'Minority'

Then, my Honourable friend² laid down the proposition, acquisition first, and distribution afterwards

. . . This is not a question of acquisition and distribution. It is not that we are acquiring some land, it is not that we are going to enter upon a venture and then we share or distribute the spoils. But, may I know, if that proposition is correct, why did Mahatma Gandhi fast to death and come to an agreement with the sanction and concurrence of all leaders from India and arrive at the Poona Pact as regards the Depressed Classes? Why were they not

Question of acquisition and distribution

1 Mr. Bhulabhai J. Desai.

2 Mr. Bhulabhai J. Desai.

told, 'acquisition first and distribution afterwards?'

**Criticism
of
Federal
Scheme**

. I object to the Central Scheme first. Take your own words, Sir¹. . . . This is what you said, "The scheme is wholly unnatural, artificial and unknown to any Constitution." I would add to that—it is devoid of all basic and essential elements and the fundamental requirements which are necessary to form any Federation. My second ground is that it proposes the entry of the Princes on terms and conditions laid down by them as *sine qua non* and as conditions precedent, and which are, on the face of them, most detrimental to the vital interests of British India I am not against the Princes

**Position of
Princes in
Federal
Scheme**

. . . . I am for British India . . . I say . . . that I do not preclude myself from considering any alternative scheme of all-India Federation which I think is in the interests of British India, and I shall be only too glad if I am satisfied that it is good to accept it having regard these impossible terms which the Princes have laid down, it is impossible to construct any kind of Federation worth its name

**Federal
Scheme
unworkable**

. No consent of the Provinces has been obtained, whether they are willing to federate as federating units on the terms which are laid down by the Princes or by the British Government. My next objection is that it is not workable. It does not really satisfy anybody and it certainly does not satisfy the minimum demand of anybody. It is not workable. Believe me, it will lead us to nothing but bitterness and illwill, nothing but wrangles in the so-called Federal Legislature. I appeal to the Princes to consider whether they are prepared to draw the chestnuts out of the fire. I appeal to the Princes also—is this the responsibility which they laid down for the Centre and on which condition they were prepared to come into the Federation? Here,

¹ Sir Abdur Rahim. President of the Assembly.

there are 98 per cent. of the safeguards and two per cent. of responsibility !

Now, next, what do we find about the safeguards? Reserve Bank, Currency, Exchange—nothing doing. Railway Board—nothing doing, mortgaged to the hilt. What is left? Fiscal Autonomy Convention. Next, what is left? Defence, External Affairs—reserved. Finance—it is already mortgaged to the hilt, our Budget, and the little that may be there, what do we find? Special responsibility of the Governor-General! His powers as to the Budget, and the estimates, his powers as to the interference in legislation, his extraordinary powers, his special responsibility, Sir, what do they leave us? What will this Legislature do?

* * * *

. . . . this idea of an All-India Federation was started as a device in order to withhold responsibility at the Centre in the British Indian Constitution. We were put on the wrong track I call upon His Majesty's Government to review the whole position in consultation with Indian opinion.

* * * *

. . . . so far as the provincial schemes are concerned, they are undoubtedly an advance on the present, and that is why I want to make a distinction First of all, the franchise, the enlargement of the electors and voters. Next, all the members of the Provincial Legislatures will be elected: that is an advance. Your Cabinet in the Provinces will be of the elected members responsible to the Legislature and the Legislature will be responsible to the electorates. That frame-work of the Provincial Constitution is undoubtedly an advance. But there are certain objectionable features such as, the Second Chamber and the Governor's powers Therefore I cannot say I am so fundamentally opposed to it as to reject it.

* * * *

. . . . Modify the Provincial scheme, drop the Central scheme, and review the whole position in

Safeguards

No responsibility at Centre

Why Provincial Scheme should not be rejected.

consultation with Indian opinion with a view to establishing complete responsible government in British India.

42. INDIAN NATIONAL CONGRESS ON REFORMS OF 1935.

(Presidential Address of Babu Rajendra Prasad,
Bombay, 1934).

'Four tests'
for Reforms

I will judge the White Paper proposals in the light of four tests, namely, (1) how far the proposed new legislatures will be representative of the nation ; (2) how far the powers alleged to be transferred to popular control are real in the Centre and the Provinces ; (3) what the powers proposed to be transferred in regard to the Finances are, and what additional burdens India will have to bear for the New Constitution ; and (4) whether the proposed constitution contains within itself any elements of growth and development.

'Arguments
against putting
nominees of
Indian
States in
Federal
Legislature

It is sought to replace the bloc of officials and non-officials nominated by the Government by nominees of Indian States joining the Federation. The nominated officials and non-officials of British India cannot be said to be amenable to popular opinion but they have certainly a wider outlook and are more in contact with public opinion than any nominee of a State could be. They also feel a sense of responsibility even though it is to the British Government and not to the people of India. Will the State nominees have any information about or acquaintance with events happening in British India from which the States have been in a way kept segregated? The only effect of the replacement of the nominated bloc by States' nominees will be a tightening of the British control coupled with traditions of a more autocratic rule and greater disregard of popular wishes than we are accustomed to in British India and which these nominees will bring with themselves . . .

In the provinces the nominated bloc is done away with, but several provinces like Bengal, Bihar and Orissa and the United Provinces are going to be

addled in its place with a Second Chamber, and if the trend of opinion as it is developing in England gives any indication, other provinces are probably going to follow suit under the advice of the Joint Parliamentary Committee. Whatever justification there may be for a Second Chamber in the Federal Legislature, there is none whatever for it in a subordinate legislature like that of the provinces. Besides, there is no justification for the extra expenditure involved in setting up and maintaining those Second Chambers. Nor does the experience of the working of the Montford Reforms lend any support in their favour even in the provinces which may be said to be radical or very progressive.

No justification for adding Second Chambers to Provincial Legislatures

Now, no constitution can be said to confer Self-Government or Responsible Government or Dominion Status, much less complete independence, which reserves to the Governor-General and refuses to transfer to Ministers under the control of a popular legislature, the administration of Defence, Foreign Affairs and Ecclesiastical Departments. But leaving this alone, which the White Paper frankly reserves, let us consider the Departments it professes to transfer. In regard to these also, it is clearly laid down that the Governor-General will not be guided by the advice of Ministers, if so to be guided would infringe on what are called the Reserved Departments, his special responsibilities and I may add also his discretionary powers. These are couched in such general terms that there are hardly any measures which the Governor-General could not hold up or prevent, if he considered it necessary to do so, in his wisdom, which will be the final arbiter in the matter. These special responsibilities are so vague and widespread that they may be said to pervade all departments.

Reserved Subjects

'Special Responsibilities' and discretionary powers of the Governor-General

It is not inconceivable that the most innocent action taken by a Minister not in favour with the Governor-General or the Governor, and in this respect the powers of both are identical for all practical purposes within their respective spheres, could easily be regarded as infringing upon his special responsibility

Unreality of Provincial Autonomy

in respect of one or other of the seven heads into which it is divided. The much-advertised autonomy of the Provinces really gives more autonomy to the Governor than to the people or the Minister and enables the Governor-General to have his orders executed in spite of the Ministers even when they may happen to deal with a matter falling within the scope of the latter if only the Governor or the Governor-General decides that it infringes on the special responsibility of the one or the other.

Enumera-
tion of
'Special
Responsi-
bilities' of
Governor-
General

Special responsibilities are laid down under seven heads for the Governor-General. They are : (1) the prevention of grave menace to the peace or tranquillity of India or any part thereof ; (2) safeguarding of the financial responsibility and credit of the Federation ; (3) the safeguarding of the legitimate interests of minorities ; (4) the securing to the members of the Public Services of any right provided for them by the Constitution Act and the safeguarding of their legitimate rights ; (5) the prevention of commercial discrimination ; (6) the protection of the rights of Indian States ; and (7) any matter which affects the administration of any department under the direction and control of the Governor-General, the Governor-General being empowered in each case to determine whether any special responsibility is involved in any given circumstance. The same powers are given "*mutatis mutandis*" to the Governor in so far as they are applicable to provinces. The first practically takes away with one hand what it purports to give with the other ; law and order, though said to be transferred in the provinces, are thus kept quite safe within the double lock of special responsibility of the Governor-General and the Governor. The elasticity of this phrase is quite well known in this country and I am using no language of exaggeration if I say that it is mere camouflage and a fraud to say that law and order are being transferred when the special responsibility in this respect is reserved in the wide and all-pervasive terms as is done under the White Paper proposal.

Law and
Order

As regards the second, admittedly, definition of this responsibility is drawn in wide terms and enables the Governor-General to step in whenever any proposal of the Minister regarding budgeting or borrowing is considered by him as prejudicing or endangering India's credit in the money market of the world. Past experience has shown that financial stability and credit of India are synonymous with British profit at the expense of India, and British interests have been served so often and so brazen-facedly in the name of India's stability and credit that no Indian is likely to be deceived by words which connote more than their ordinary dictionary meaning. The entire currency and exchange policy of the Government is said to be dictated by these considerations and we know it to our cost how a stroke of the pen or an apparently innocent notification of the Government has the effect of transferring crores from the hands of Indians to those of the British without the former realising it.

Governor-General's control over finances

Indian interests subordinated to British interests

The third will, of course, come very handy in turning many an awkward corner. Our Muslim brethren and others who are in a minority are apt to run away with the idea that the British Government is reserving special responsibility to safeguard their interest. Really speaking, if there is anything more calculated than another to keep all the communities warring with each other, it is this. Besides, it is a delusion to think that the safeguards are devised to serve any of the Indian minorities. They will find in actual working that after all, in all matters of moment, it is not they who are meant but the small microscopic minority of those birds of passage who come from thousands of miles and make hay while the sun shines and then disappear in the evening of their days to enjoy the fruits in their native land again.

Protection of Minorities

European interests to be served in the name of minority interests

The fourth destroys whatever is yet left of autonomy. We shall indeed be masters in our own house without having the power to order our servants

Public Services

**Peculiar
position
of civil
servants**

about, to whom we shall be bound to pay their unbearably high salaries, guarantee their pensions and leave and promotion and what not. It will be easy enough for these so-called Civil Servants to see at naught not only the policy, decisions and orders of their so-called superiors—the Ministers, but to create deadlocks which will be set down to the discredit of Indians who will be branded as incompetent and inexperienced Ministers to whom it was a mistake, it will be said, to transfer powers.

**Prevention
of commercial
discrimination**

In the name of preventing commercial discrimination against the British, it is really ensured that the Indian should be discriminated against in the future as he has been in the past.....

**Protection
of Indian
States**

As regards the Indian States, we have already had illustrations how activities of their subjects in favour of constitutional reforms can be throttled and the special responsibility of the Governor-General or the Governor in this respect will be used for preventing the virus of democracy from spreading into these States.

**'Discrimina-
tory powers'
of Governor-
General and
Governors**

So much for special responsibilities. The discriminatory powers of the Governor-General and the Governors are of a most drastic kind. Under the existing Constitution, the Governor has the power of certification and veto, but under the proposal embodied in the White Paper, he can also send message to the legislature not to proceed with a certain measure of legislation as also to proceed in a certain way; not to pass certain laws as also to pass certain others or that a particular measure must be passed by a particular date and in the event of the legislature refusing or failing to obey his command, it will become a Governor-General's or Governor's Act which will have the force of an Act of legislature without having the odium attached to the name of "ordinance" and without the fetters of a limited duration, which an ordinance has. These proposals place India under a virtual dictatorship. Mr. Churchill described the position admirably in another context :

Legislation

"The Viceroy or Governor-General was armed with all the powers of a Hitler or a Mussolini. By a stroke of pen, he could scatter the constitution and decree any law to be passed or martial law, which was no law at all. Of all these he was the sole judge. Such a functionary was a dictator and he had a very powerful army."

Churchill
on Viceroy's
dictatorship

All this power is given not only to the Governor-General, but even to Provincial Governors who are, for the first time, to be invested with powers to pass Ordinances and Governor's Acts and all other powers within their spheres which the Governor-General possesses in respect of the country as a whole.

Governors'
legislative
powers
increased

When we come to consider the question of finance, the illusory nature of the so-called reforms becomes still more apparent. It has been calculated that 80 per cent. of the Central revenue in the Central Government will be eaten up by Army expenditure, Debt service, guaranteed pays, pensions and allowances, which will be outside the vote of the Assembly, and the remaining 20 per cent, with which alone the Minister, supposed to be responsible to the legislature, could play, would be subject to a vote of the upper chamber which could bring it before a joint session of both chambers for final determination. Further, if the Governor-General regards the demand for grants by the Minister under any head inadequate for the discharge of his special responsibility, he may include any additional amount which he regards necessary for the discharge of such special responsibility and the legislature will not be at liberty to vote on the same. Thus it is apparent that the control of the Ministry over the public purse is practically nil in the Centre.

Finance

Non-votable
expenditure

Special
powers of
Governor-
General

* * * *

There is no provision for any automatic growth or development in the constitution. Everything does and will continue to depend on the sweet will and pleasure of the British Parliament. There is no

No provision for 'automatic growth or development'

pretence at self-determination and even the Federation, which is to come after fulfilment of so many conditions precedent, can come only after a second vote of the Houses of Parliament.

'No mutuality' between British Indian Provinces and Indian States

And what is this Federation? It is a kind of federation which has no parallel in history. In it the rulers of one-third of India will be called in to counteract through their nominees the progressive elected elements of the remaining two-thirds. There is absolutely no mutuality in any respect; the Prince-nominees will have equal rights with the elected representatives of British India to interfere with the administration of British India without British Indian representatives having any the least voice in the administration of the States, which will continue their autocratic rule without so much as even declaring or guaranteeing the elementary, fundamental rights of citizenship, which are or rather ought to be the basis and foundation of any allegiance which the people may be required to bear to the State. In other words, it will be a kind of federation in which unabashed autocracy will sit entrenched in one-third of India and peep in every now and then to strangle popular will in the remaining two-thirds. But the Princes themselves will be more helpless than they are now and will soon realise the effect of a federation which is conceived to keep them free from the baneful interference of British India people but nonetheless subservient to the Viceroy.

Combination of 'unabashed autocracy' with popular will

43. SIR SAMUEL HOARE¹ ON THE GOVERNMENT OF INDIA BILL, 1935. (House of Commons, February 6, 1935.)

Complications of All-India Federation:

I will begin with the first chapter of the Bill, the chapter dealing with All-India Federation. Any Federal Government is bound to be more complicated than a unitary Government, and in the case of an All-India Federation there is the additional complication due to the fact that the units are as different as the Indian States are from the British India Pro-

¹ See Keith, *Constitutional History of India*, pp. 311-312.

vinces. Those complications react upon almost every clause in the Federal chapter. They react, for instance, upon the provisions as to how the Federation is to be formed, for it is obvious that the Princes, being voluntary agents, can only enter of their own volition. They react, again, upon the kind of executive and the kind of legislature that is proposed, each side of the Federation obviously demanding adequate representation both in the Government and in the Federal Legislature. They react, again, upon the relations between the two Federal Chambers, the Princes, from the first, attaching the greatest possible importance to the Chambers having equal powers. They react, further, upon the list of federal subjects, the Princes, again, rightly insisting that, apart from the functions of Government which they surrender to the Federation, there should be no interference in their internal sovereignty. These complications make a formidable list of difficulties, but I would ask the House to observe, first of all, that 9 out of 10 members in this House, indeed I believe 99 out of 100 members, regard All-India Federation as our objective, whether immediate or ultimate; and, secondly, that all these difficulties which I have just enumerated are inherent in an All-India Federation, whether it comes about under this Bill or whether it comes about this year, or next year, or under another Bill in 20 years' time.

That being so, I claim that the differences that will arise in our discussions on the federal chapter will be differences of method rather than differences of principle. For instance, should the Bill include a federal chapter as well as a Provincial chapter, that is to say, should the Federation come under the same Bill as Provincial Autonomy? That is a question of method and not a question of principle. Secondly, is the kind of federal machinery the best kind of federal machinery in the circumstances? Hon. and right hon. Gentlemen opposite made alternative proposals. They were turned down by the Committee, and I think on very good grounds, but I imagine they will raise their alternatives again in our discussions.

(i) Indian States

(ii) Executive

(iii) Legislature

(iv) List of Federal subjects

General agreement about necessity of Federation

Questions of detail relating to Federation which may lead to disagreement about methods etc.

**Direct or
indirect
election ?**

Thirdly, should the method of election for the Federal Legislature be direct or indirect election? That is a question which, I know, interests intensely a certain section in this House. The Committee weighed the arguments on both sides and found that there were very serious objections in either course. None the less they came to the view that in the circumstances indirect election was the wiser plan, and that indirect election, or any method of election, is bound to be in the nature of an experiment.

**Federal
Court**

**Reserve
Bank and
Railway
Board**

I have quoted those instances to show that the character of the Federation reacts upon all the Federal organs. I have said a word about the Federal Legislature and the Federal Executive. Let me now say a word about one or two other Federal organs. I do not think I need pause on the chapter dealing with the Federal Court. I think everybody admits that in a Federation there must be a Federal Court for the purpose of interpreting the constitution and I believe myself that when we come to that chapter we shall find little or no difference among any hon. Members on that point. There are, however, two other Federal organs upon which I might say a word by way of illustration, the Reserve Bank and the Railway Board. The proposals for a reserve bank and a railway board are in each case the result of a long and expert investigation, and on the whole I think they are workable proposals.....My own view is.....that the Reserve Bank and the Railway Board, if they are to fulfil the purpose which we desire them to fulfil, must be kept as independent as possible from political management and political interference. I have quoted these instances from the Federal Chapter, not to suggest that the provisions of the Federation are either simple or uncontroversial—they are neither—but rather to suggest to hon. Members that the issues of major controversy are limited in number.

**Remarks on
Provincial
Govern-
ment**

I pass to the next chapter—the Provincial Chapter. It is a long one comprising many clauses, but if hon. Members will read it they will see that the

greater part is little more than a repetition of the Federal Chapter. I think that three clauses out of four are almost identical with the clauses in the Federal Chapter. We might have dealt with this chapter by means of cross references to the Federal Chapter. On the whole, I think we were wise in taking the other course. We felt it was much fairer to the Provinces to receive their constitutions in this part of the Bill, so that they should see their constitutions set out in self-contained provisions and at length. Similarly, I felt, from a good deal of experience in this House, that, though the large number of clauses might look very formidable, hon. Members would greatly prefer to see the whole story set out simply and in detail, rather than have to search about by cross references to other parts of the Bill.

So far as the substance of this chapter is concerned, I do not believe that we shall find many issues to divide us. So far as I am aware, every Member in this House, wherever he sits, has admitted the need for provincial autonomy. The question that will divide some of us will be this : Is it possible to have provincial autonomy without the transfer of law and order ? My friends and I—and we are supported by the overwhelming majority of the Joint Select Committee—take the very definite view that it is quite impossible to give further and real responsibility to the Provinces without making the transfer of law and order, and that being so, the question arises for the House to consider, assuming that law and order are transferred, is the plan set out in the Bill the best plan to safeguard the morale, the organisation and secret intelligence of the police ?

There is another question which, no doubt, will be raised on this chapter. It is a question which very much interests right hon. and hon. Members opposite : should there or should there not be second chambers in the Provinces ? The House will observe that, in accordance with the Committee's recommendation, we are proposing an addition of second chambers,

over and above what were proposed in the White Paper, in the Provinces of Madras and Bombay. I think we shall find, when we come to discuss the question of second chambers in the Provinces, that there is good ground for that recommendation, and that the view of the Joint Select Committee is a wise view, namely, that wherever second chambers can be effectively set up in the Provinces, they should, generally speaking, be set up. Apart from those two questions—I am coming later on to the question of special responsibilities—I myself do not see other major issues of controversy in the Provincial Chapter.

**'Special
Responsibilities'**

Defence

**External
Affairs**

**Question of
time limit**

I pass now to a number of provisions which concern both the Federation and the Provinces, and I begin with the provision concerned with the reserved Departments and the special responsibilities of the Viceroy and the Provincial Governors. Here, at least, it might be thought that there would be wide difference in principle between one section of the House and another. Yet it is a significant fact that during all these last four or five years of discussion, first of all with Indians at the Round Table Conference, and, secondly, in the Joint Select Committee, there has been a surprising measure not of disagreement but of agreement. There has been, for instance, general agreement from the very beginning of our discussions that, in the circumstances of India, defence must be a reserved department. Upon the reservation of defence, it almost inevitably follows also that the Department of External Affairs being so closely connected with defence, must also be reserved. The point of difference, therefore, has not been the reservation of the Department of Defence, but whether it is or is not possible to put a time limit to that reservation. Is it possible in a Bill to set out a time-table under which, in progressive stages, the Indian Army is Indianised? We have discussed that question over and over again. While we have every desire to help India along the road of responsibility, we see no means of including in

any Bill conditions over which this House, and no other House, has really any control. But, no doubt, we shall hear more of that question when we come to discuss the Chapter on Defence.

Passing to the special responsibilities, there, again, we have behind our proposals a really remarkable measure of agreement. From the very start of our discussions there has been a general admission that over a certain field of government certain special powers of intervention are inevitable in the present condition of India. Indeed, there has been very little difference of opinion even over the extent of this special field of administration, this special field of government, perhaps, I should rather say. The difference which has arisen has not been so much as to whether there should be this field of special responsibilities or not, whether there should be a certain scope or not, but rather over the definition of the special responsibilities. Should they be defined more precisely in certain respects as we define them in the Bill? On the other hand, in certain circumstances should the special powers of intervention be dealt with by powers of a more general character?

**Definition
of 'Special
Responsibilities'**

I will take one of these special responsibilities as an instance of what I am trying to explain to the House. I will take the special responsibility connected with the question which I know is in the minds of many hon. Members here, and in the minds of many of our friends in India, that is commercial discrimination. It has been admitted, I think, by everyone that some safeguard is necessary in the circumstances. The representatives of the labour Party on the Committee took the view that a general power in the Governor-General to refuse his sanction to the introduction of a Bill involving unfair discrimination was sufficient. The majority of the Committee held, however, that it was necessary to be more precise if the Governor-General and Indian Ministers were not to be left in a state of dangerous obscurity.

**Commercial
discrimination**

**Safeguards
for British
trade**

Accordingly, the Bill, following the recommendations of the Committee, defines the safeguards under two main headings, first of all, reciprocity of treatment for British and Indian traders and companies, and, secondly the power of intervention in Indian tariffs were to be used, not in the economic interests of India, but with the object of injuring the interests of the United Kingdom. The spirit in which those provisions are to be applied will be fully explained in the Instrument of Instructions. All that I need say at present is that so far as tariffs are concerned our intention is substantially to continue the same fiscal autonomy that has existed in India for the last 14 years. British imports into India will, I am convinced, receive the same consideration as under the present convention. The powers taken in the Bill, if they ever have to be used, will, I am satisfied, be adequate. When we come to the detailed discussion of this very important question, we shall see whether there is any responsible Member in any part of the House who will propose the abrogation of fiscal autonomy. I can only say that every Government since the Montagu-Chelmsford Reforms has accepted the Fiscal Autonomy Convention, and that no Member of any of those Governments, so far as I know, has hitherto proposed its abrogation. I am not surprised. The surest way to destroy British trade in India is to attempt to impose upon India a tariff from Great Britain. It was this policy which lost us the American Colonies. Was not Chatham right in resisting North's attempts to impose a fiscal policy from Great Britain ?

**Fiscal
Autonomy
of India**

'Services'

There are three more chapters in the Bill connected both with the Federation and the Provinces, about which I want to make a few observations. There is the Chapter upon the Services, a very long Chapter of about 40 clauses. This might seem a very formidable undertaking, but when hon. Members come to study it they will find that substantially it does no more than set out in statutory form the long

series of rules connected with the Services which now only appear as administrative orders. There is scarcely a proposal in this long Chapter that is new; there is scarcely a proposal that is not already in those administrative orders. There will be two issues that the House will no doubt wish to discuss, and the first is whether the majority of the Committee and the Government in the provisions of the Bill are taking the wisest course as to recruitment. The Bill proposes very briefly to continue recruitment on its present lines. The Committee studied the question in very great detail and came to the conclusion, which I think was a very wise conclusion, that it was all-important in view of the very difficult task with these great reforms coming into being, to do nothing to disturb the Services or to increase the anxiety of men, Indian as well as British—because this is not simply a British issue—upon whose shoulders will depend so much the success of the Bill.

**Method of
recruit-
ment**

Secondly, there is the further question connected with the services that I know has interested, and rightly interested, many hon. Members, that is the question of pensions. Here again the Bill accepts the Committee's very careful conclusions. In their and our view, no pensioner need feel anxious as to the security in future of his pension. Moreover, so far as the family pension funds are concerned, the Bill, following the Committee's recommendation, offers the beneficiaries the choice between letting the money stay in India or having it transferred to trustees in London in the near future. Apart from those two questions I do not believe that we shall find this long Chapter on the Services a controversial Chapter.

Pensions

Then there is the very important Chapter upon the Judicature—the Chapter on the High Courts, the subordinate courts, and the subordinate judiciary. It is an all-important Chapter which I believe we shall find to be almost uncontroversial. It was the aim of the Committee, and it has been the aim of the Government in making the proposals dealing with

Judicature

this all-important question to achieve the objective of keeping the judicature, superior and subordinate, free and independent of political influence. I believe it will be found that we have been not unsuccessful in achieving that objective.

Finance

Lastly I come to a Chapter of the very greatest importance in its reactions both on the Federal Government and on the provincial Governments, and that is the Chapter on Finance. It is a Chapter that is fundamental to the whole scheme. It is bound to be a very complicated Chapter. The financial relations between the Federal Government and the Provinces are bound to be complicated. Apart from the financial obligation which has grown up between India and Great Britain it will be seen that, however one may attempt to deal with finance, the attempt must give rise to a good many complex feelings. I imagine, however, that, apart from the technical issues, the main question will be this : Can India afford the proposed Reforms? Can it pay both for Federation and for Autonomy in the Provinces at the same time? These questions we must fully discuss, and I hope that we shall discuss them dispassionately and without exaggeration.

Can India pay for Reforms?

Cost of Reforms

Let me at this stage make three preliminary observations. First of all, the actual cost of the new federal machinery is estimated at only £500,000 a year and the actual cost of the new Provincial machinery at a similar amount. Secondly, the rest of the burden will be thrown on the Central Budget, about £4,000,000 a year; namely, about 4 per cent of the Government of India revenue, does not represent new expenditure and is in no sense expenditure attributable to the constitutional proposals, but represents the transfer to the Centre of a burden which would otherwise have rested on the shoulders of Burma and certain of the Provinces. Thirdly, Indian finances react very quickly to more favourable conditions. No better instance can be found than the experience during the last three or four years in which we have seen Indian budgets and Indian

Soundness of financial basis of Reforms

credit rapidly improving in the most remarkable manner. With this experience behind us, and the fact that this sum amounts to only a small percentage of Indian revenues, we need not, I think, take a pessimistic view about the financial basis of the scheme.

* * * * *

Lastly, there are certain proposals which concern equally all parts of the Bill, the Federal Chapter, the Provincial Chapter, and the Burma Chapter alike. They are connected with the Instruments of Instructions that will be issued to the Viceroy and the Governors as to the spirit in which they are to carry out their duties under the Act. Constitutional experts will remember the part the Instruments of Instructions have played in other parts of the Empire. In the case of India they are of peculiar importance. Where the situation is as complicated as this situation is, it is essential that the Viceroy and the Governors should be given clear instructions as to the spirit in which they are to carry out their duties. It is equally important from the point of view of Indians, because in the nature of things this constitution is a rigid constitution, and it can only be amended by future Acts of Parliament. It is rigid because of the peculiar conditions prevalent in India and because Parliament here would not be prepared to abandon its oversight of future changes. Into this constitution it is, however, possible to introduce an element of growth and flexibility by means of the Instructions. The Instructions therefore will obviously play a very important part in the development of the constitution. That being so, we are proposing to adopt the procedure recommended by the Committee that, for the first time in our history, the Draft Instructions should receive the Parliamentary sanction of both Houses. We feel that they will be of such importance, both from the British and from the Indian point of view, but there ought to be Parliamentary sanction behind them. We therefore propose, at about the time that the Committee stage begins, to circulate the Draft Instru-

**Instruments
of Instruc-
tions**

**Rigid
constitution**

**Instruments
of Instruc-
tions will
introduce
flexibility.**

**Instruments
of Instruc-
tions
receive
Parliamentary
sanction**

tions in the form of a White Paper. At the proper time we shall have to ask both Houses to discuss them, and we shall have to obtain the Parliamentary sanction of both Houses before they are issued to the Viceroy and to the Provincial Governors.

* * * * *

**Importance
of the Joint
Committee**

Let me sum up this part of my observations, I would venture to claim, first of all, that, big as the Bill appears—it has 450 clauses in all—it is nothing like so big in substance as it appears. Secondly, practically every proposal in it is the result of four years', indeed, I might say of seven years', discussion, ending with the meticulous investigation of the Joint Select Committee, a Committee composed of Members of both Houses, who investigated every detail of it. Thirdly, the Bill follows substantially all the recommendations of the Joint Select Committee. Lastly, if my survey is a correct one, and I believe it to be correct, I think I may claim that the issues of major importance are strictly limited. This being so, I hope.....that the House will be able to deal with it with reasonable expedition.

**Controversial issues
strictly
limited**

**Majority of
Indians will
work the
Bill.**

I come now to the third objective which, when I began my speech, I stated was in the mind of the Government. What is it that we hope to achieve when this Bill passes? When last I addressed the House I said I believed that the majority of Indians would work the Bill, and that British-Indian relations would improve when the Bill was worked. Nothing that has happened since I spoke in December has altered my view. I am aware of the volume of criticism that has met the Bill in India. I am fully aware of the recent debates in the Indian Assembly, I noted in particular, and I noted with great regret, the debate upon the Supplementary Trade Agreement.....

**Indian
criticism of
the Bill**

**Position of
the Non-
gress**

Attaching full importance to all this criticism, I ask the House to keep it in its proper perspective. I ask the House, first of all, to note the fact, that the main critics in India are the members of the

Congress Party, the largest party in the Indian Assembly. The Congress Party has always made its position clear, namely, that it will accept no proposals from this House, whether these proposals or any other proposals, whether this Bill or a Bill on the lines of the Labour Amendment¹. They have made it quite clear that the only proposals they will accept are the proposals that might emerge from an Indian Constituent Assembly. It goes, therefore, without saying that Congress will be opposed to any proposals that this House is likely to make.

Secondly, outside the Assembly I note the fact that most of the Provincial Councils have now held discussions upon the proposals of the Committee, and I have been told that they have been very reasonable discussions on the whole. They have made one thing quite clear, namely, the Provincial politicians are prepared to work the Bill. Let us remember how great will be the part of the Provinces and the Provincial politicians in an All-India Federation. It is a very hopeful feature of the situation that the very men upon whom will depend so much the working of the future Federation are the men who seem to make it clear that the proposals are workable.

**Provincial
politicians
will work
the Bill**

Thirdly, there is the significant fact that the Princes, in spite of the pressure upon them—not from me, not from the Government, but from other directions—have in no way recoiled from the position that they took up four years ago. Quite rightly, they claimed that they must see the final proposals before giving their final assent or dissent. The House may, however, rest assured that there is no evidence to show that the Princes, great and small and of medium position, have altered their general attitude toward the question of an All-India Federation.

**Position of
Princes**

These are significant facts. They confirm me further in the conviction, first of all, that the Bill will be worked, and, secondly, that neither now nor at any future time is it possible to hope for general

**'General
agreement'
not available
in India**

¹ See Document 44.

agreement in India about any scheme. If Parliament waits for general agreement, it will wait for ever. Indeed, I go so far as to say that I do not believe that within our lifetime we shall ever get more agreement in India upon any scheme that Parliament is likely to pass than we have obtained for this scheme. The time has come for Parliament to act, and, the longer Parliament takes in acting, the greater will be the opposition in India, and the less will be the agreement that we shall have behind our proposals.

**'Irresponsi-
bility' of
Indian
Legislature**

Let us face realities. The real danger in India is not Congress, or Communism, or misgovernment; it is irresponsibility. As long as Indian Assemblies have no responsibility to govern, so we must expect regative criticism, and even mischievous obstruction. Has it not been the history of the British Empire that irresponsibility is the real danger to good relations between the Mother Country and its Overseas dependencies? It was this sense of irresponsibility, carrying with it the sense of inequality of status, that was at the bottom of the trouble with the American colonies in the 18th century.

* * * * *

**'Real Res-
ponsibility'
to be
introduced
in Centre
and Pro-
vinces**

I do not take the view that, while irresponsibility is bad for men and women of British-stock, it is good for men and women of Asiatic stock. I believe that, unless we introduce this element of real responsibility, both into the Central Government and into the Provincial Governments, we shall see the state of affairs going from bad to worse, we shall see these assemblies not becoming easier to deal with in the future than they have been in the past, but immensely more hostile, with a growing body of hostility from one end of the country to the other.

**Question of
status**

The fact is that irresponsibility is to most people the outward sign of inequality of status. We in Great Britain pay very little attention to questions of status. Our position has been so fully assured in the world for many generations that we have no need to bother at all about questions of status. Not so

the other countries of the world. Not so Germany, in Europe to-day, not so Japan in Asia, not so our Indian fellow-subjects who, looking back over centuries of civilisation, feel as sensitive as any of the great peoples of the world to any charge of inequality of status. A move forward, therefore, on the road to responsible government is something much more to them than a mere political reform. It is the outward and visible sign of the recognition of their status.

Why, then, do we not make this clearer in the Bill? Why in particular do we not state it in a Preamble to the Bill? I will tell the House why, and tell them in words which have behind them the considered judgment and the full weight of a Government statement.

The House will observe that the Bill, like most modern Bills, contains no Preamble. There have, it is true, been important Acts in the past, among them the Government of India Act, 1919, to which a statement of policy and intentions was prefixed. There is, however, no need for a Preamble in this case as no new pronouncement of policy or intentions is required. The Preamble to the Act of 1919 was described by the Joint Committee in their report as having.

Why there
is no
Preamble?

"Set out finally and definitely the ultimate aims of British rule in India." The Committee, after full consideration, further asserted that

Views of
Joint Com-
mittee

"subsequent statements of policy have added nothing to the substance of this declaration," which they then proceeded to quote in full in their report as, in their own words,

"settling once and for all the attitude of the British Parliament and people towards the political aspirations"

of India. If the Committee were justified in their statements—and the Government consider that they were fully justified—there is surely nothing to be

**Need for
continuity
of policy**

gained by reiterating words which have settled one and for all the attitude of Parliament to the Indian problem. Moreover, in government, and above all in the government of the Indian Empire, continuity of policy is of the first importance. No Government and no Parliament can treat lightly any statement issued under the authority of their predecessors. But, once the aim of a policy has been clearly determined and accepted, significance attaches not to its reiteration but to the concrete measures taken in pursuance of it. The position of the Government, therefore, is this. They stand firmly by the pledge contained in the 1919 Preamble, which it is not part of their plan to repeal, and by the interpretation put by the Viceroy in 1929, on the authority of the Government of the day, on that Preamble that :

**Government
'stand
firmly' on
the 1919
Preamble.**

**Declaration
of 1929**

"The natural issue of India's progress as there contemplated, is the attainment of Dominion Status."

The declaration of 1929 was made to remove doubts which had been felt as to the meaning of the Preamble of 1919. There is, therefore, no need to enshrine in an Act words and phrases which would add nothing new to the declaration of the Preamble. In saying that we stand by our pledges I include, of course, not only pledges given to British India, and to Burma as part of British India, but also our

**Goal to be
attained
when India
creates
conditions
favourable
to self-
government**

Rightly understood, the Preamble of 1919, which I repeat will stand unrepealed, is a clear statement of the purpose of the British people, and this Bill is a definite step, indeed a great stride forward towards the achievement of that purpose. It is by acts and not by words that we claim to be judged. It is clear that we can only reach the end we have plainly set before ourselves when India has succeeded in establishing the conditions upon which self-government rests, nor will its attainment be delayed by any reluctance on our part to recognise these conditions when they actually exist.

There are difficulties which she has to surmount, but they are difficulties inherent in the Indian prob-

tem and not of our creation. If I indicate by way of example two of them, it is not, therefore, through any desire to magnify them but because it is useless in matters of this kind to refuse to face facts or to assume that, if facts are avoided, they will dissolve. The first and most conspicuous problem which India has to solve is her cleavages of race, caste and religion. Again, until India can safely assume in much larger degree the responsibility for her own effective defence an Indian Government cannot be in the full sense of the word autonomous. These are examples of conditions which cannot be removed or altered by any provisions in any Act of Parliament or by any action on our part alone. Our policy, as will be seen from this Bill and the Instructions as to the manner in which these provisions which will accompany it are to be applied, is to do all that we can by sympathetic help and co-operation to enable India to overcome these difficulties and ultimately to take her place among the fully self-governing members of the British Commonwealth of Nations. It was in this spirit that we took upon ourselves the formidable burden and responsibility of removing one of the chief obstacles to further advance by providing a 'modus vivendi' in regard to the removal of communal differences. Our desire is to lend our help in the spirit of partnership in a great enterprise which may enlist the best services which this country and India may have it in their power to give.

'Difficulties inherent in the Indian problem'

'Cleavages of race, and caste and religion'

Problem of Defence

Communal Award

In Burke's well-known words

"Plain good intentions are of no mean force in the government of mankind."

I have stated the intentions of the Government—plain, good intentions. They were the intentions of the Committee. They are, I believe, the intentions of the great majority of this House. If there are still those who impugn our motives, if there are still those who doubt our word, we are ready to be judged by our actions. And of our actions this Bill is the outward and visible sign—a Bill that has been hammered out in the face of almost overwhelming

Intentions of England

**Merits
of the Bill**

difficulties, a Bill that is the result of years of incessant inquiry, a Bill that offers to India a vast and fruitful field of self-government, a Bill that holds the balance fairly and honourably between conflicting interests and competing parties, a Bill that comes in the direct line of succession to the great Imperial measures of the past. Let Indians, though they may wish for a longer and a swifter advance, mark the spirit in which we make these proposals. Let Parliament, realising the difficulties in any course of action, remembering the complexities of any scheme of Indian reform, admitting the many imperfections of any proposals, show by the majority for Second Reading and its attitude in the subsequent stages of our discussions, that it intends to act, as it has acted upon great issues of the kind in the past, with resolution and expedition no less than with caution and wisdom.

**44. MR. ATTLEE' ON THE GOVERNMENT
OF INDIA BILL, 1935.**

(House of Commons, February 6, 1935).

**Criticism of
omission of
Preamble**

I welcome very much the declaration which he² made on behalf of the Government with regard to the object at which we are aiming in India, and that object includes Dominion Status. But I cannot understand why, if that is the mind of the Government, the statement was not made long ago. No mention was made of the subject in the earlier discussions which we had either on the White Paper or on the report of the Committee, and yet from one end of India to the other a complaint has gone out on this particular matter of the recognition of India's

1 Mr. Attlee moved: "no legislation for the better government of India will be satisfactory which does not secure the good will and co-operation of the Indian people by recognising explicitly India's right to Dominion Status and by providing within it the means of its attainment, and which does not by its provisions as to franchise and representation secure to the workers and peasants of India the possibility of achieving by constitutional means their social and economic emancipation."

2 Sir Samuel Hoare. See Document No. 43.

status. And to-day a statement is made, but the Secretary of State says : "This is just a continuation of a previous policy; we do not need to have anything in the Bill." Yet the right hon. Gentleman said, quite correctly, that Indians are very sensitive on the question of status, and that they do not take things for granted. I should have thought that it was not much use to have had long conferences with our Indian fellows if we had not grasped something of the way in which they look at things. Surely, it was a great mistake to introduce a Bill like this without any Preamble. The Bill starts off with just the words.

Indian point of view overlooked by Government

"To make further provision for the government of India."

It might be any little Bill. It does not strike the imagination in the slightest degree. To put it like that shows an utter disregard of Indian opinion. I am surprised that the Prime Minister did not appreciate this point. After all, the Prime Minister, when he was in our party, was a great authority on Indian affairs. He was mainly responsible for the declaration of Dominion Status¹. I thought that he would have appreciated the Indian point of view. ... A very peculiar point was put by the right hon. Gentleman the Secretary of State. He says, "This matter is so simple and so obvious, that we are just carrying on the Preamble of the 1919 Act, and there is no need for a Preamble". He then explained that the declaration of Dominion Status was made in order to clear up doubts that had arisen. Everybody knows that doubts were cast on exactly what the Preamble meant by no less a man than the then Leader of the Government in the Assembly in India², and that most ingenious constructions have been put on these phrases by the right hon. Gentleman the Member for Epping (Mr. Churchill), and, surely, it would have been better to have inserted a Preamble.

MacDonald should have appreciated Indian point of view.

Different interpretations of Preamble of 1919

1 See Document No. 139.

2 See Sir Malcolm Hailey's speech—Document No. 21.

**Meaning of
'Dominion
Status'**

**Labour
Party's
point of
view**

**Reception
of the Bill
in India**

**Acquies-
cence or
placid
acceptance
cannot make
a constitu-
tion success-
ful.**

**Flexible
constitution
wanted**

But it is not merely a matter of saying in a Preamble that Dominion Status is the goal. Dominion Status means much more than that. It means the recognition of the right of India to Dominion Status. It means an admission that the Indians have the right to deal with their own constitutional affairs, and that is not done either by the declaration the right hon. Gentleman has made or in the deeds which are embodied in this Act. There is nowhere any recognition of right. We on this side hold that you must recognise, as we recognise, the right of the Indian people to self-government and that no constitution can possibly be worked which is not accepted by Indians and which does not admit that claim. The whole object of the Round Table Conference was to bring Indians together so that we could get a settlement by Indians.

The right hon. Gentleman was extraordinarily optimistic with regard to the reception which this measure had in India. I could not see that there had been any enthusiasm whatever for this Bill in India. There was, as a matter of fact, rejection by all the five movements in India, not only by Congress and the Liberals, but by Labour and by many people classed as Moderates. It is really useless to claim that this Bill is going to have some kind of support from silent opinion, or that there are a certain number of people who will probably acquiesce. You cannot make a constitution a success by mere acquiescence or by placid acceptance. Therefore, we say that a Bill which does not secure the good will, acceptance and co-operation of the Indian people is not a Bill that will make for the satisfactory government of India and does not deserve the support of this House. The right hon. Gentleman made the point that the constitution to be set up will be rigid. That is quite true, and that is a complaint against it. When I had to undertake some inquiry into a constitution for India with my colleagues on the Statutory Commission¹, we came to the conclusion that it was a mistake to have a rigid constitution,

¹ Mr. Attlee was a member of the Simon Commission.

and that what was required was flexibility and growth. That does not exist in this Bill. There is no recognition of right, and there is no clear laying down of a goal and no provision of the means of attaining a goal. There is no laying down of rights because if you read the Bill, what strikes you mainly is the large number of reservations. The keynote of the Bill is mistrust. There is no trust at all. India is not to have control of her foreign affairs and of her finances. Indians in the Provinces are not fit to deal with terrorism. The whole note struck by the Bill throughout is not that here we start a constitution which is going to be worked by Indians, but some kind of a constitution with restrictions of every kind all the time. In fact, the one thing which seems to be left out of the Bill is the Indian people.

**Keystone of
the Bill
—mistrust**

**Indian people
left out
of the consti-
tution**

There is a most remarkable omission in the Bill, and I hope that the right hon. Gentleman will correct it soon. It is the total omission of anything to say who are to be the electors. It is suggested that this will be done by an Order in Council. It is a most extraordinary thing to produce a Bill to make further provision for the government of India with no provision whatever showing who are the people who are to govern in India except the Upper House. To us this is vital. The right hon. Gentleman never mentioned the franchise, and that is most vital from our point of view. Our speakers have put that question of franchise over and over again. He said nothing with regard to the representation of labour. All those provisions are left out. We want to have the franchise provisions fully before us because we wish to put down drastic Amendments, if the franchise proposals are anything like those which have been laid down by the Joint Select Committee. It is an extraordinary thing. It seems as if the political side of the whole business was something quite subordinate to the machinery. I get the idea that it must have been drafted by the Indian Government. The one thing which struck me when I was in India was the rulers of the country did not really think

**Electorate
not defined**

**Specific
provisions
about fran-
chise
wanted by
Labour
Party**

**Criticism
of British
'rulers' of
India**

political matters important. Take a simple case. In the Provinces we asked whether they had anything like our Parliamentary companion that would show the returns of the last election. We did not get it. There was nothing published which in any way gave the information. The election took place a considerable time ago, but the Government of India are unable to give us the figures, or the candidates in that very important election.

**India to be
ruled by
the wealthy
and the
privileged**

The whole business on the political side is left out, and we have really a mass of machinery. In every clause throughout the Bill we find a mistrust of the Indian people. The legislature is to be overloaded with Conservative interests. Landlords, commerce and the like. Second chambers are to be set up. The conclusion to which one comes on looking at the Bill is that the definite decision has been that India is to be ruled by the wealthy and the privileged. The curious thing is, that even those people are not trusted. The second chambers are to represent conservative interests, landlords, wealthy people and the like, but even they cannot be trusted with finance. Right through the Bill there is mistrust and inequality. We have heard of the idea that there is to be some kind of partnership in India. It is a one-sided partnership.

**One-sided
partnership**

**Position of
Princes**

Let us take the first example of inequality. The constitution at the Centre depends entirely upon the adherence of the Princes. The Princes have the right to refuse to accept the Federal system, but the Indian representatives have no option. The Princes can say: "We are not coming in", but the Indian representatives may say that they dislike the constitution and may vote against it, but nothing will happen. They have no power at all. The Indians have put forward numerous proposals, but they have been turned down. Right through the Bill, with certain exceptions, there is no mutuality. I admit that there are certain provisions with regard to the protection of Englishmen in India and of Indians over here, but on the whole the general direction is

**Indian pro-
posals
turned
down**

against the Indians. The Governor-General is to prevent discrimination in India, but no one is given power in this country to step in over the heads of Parliament or anybody else and prevent discrimination against Indians. We control India's foreign policy, and it is said that that must be so because we contribute to her defence by the Navy. If that be true, seeing that India contributes to the defence of the country, she ought to have a word in regard to our foreign policy. It is, however, all one-sided. We ought to allow her a word of control in our foreign policy, because she actually provides for the defence of the most vulnerable land frontier in the whole Empire.

India should have some control over defence and foreign policy.

Take the question of constituent rights. Such as they are in the Bill, Indians may ask for alterations in 10 years. They may come to this House and ask for changes, and this House may or may not give them, but either before or after the 10 years the Government of this country, without having to ask for authority and after more consultation, may change these constituent rights. Can one wonder, on reading the provisions of the Bill, that the Indians feel an inequality of status? It is Robinson Crusoe's ship. The hull is designed by Robinson Crusoe and at every point the Indians are very little better than Man Friday. There is inequality of status running right through the Bill. Without equality of status, I do not think that we are likely to get any real acceptance or real working of the Bill by the Indians.

'Constituent rights'

'Inequality of status' for India

I do not want to go through the Bill clause by clause. We shall do that for many weary weeks. I have spoken very often on this subject, and I would only point out certain of our major objections. We say that the Bill contains no power of advance. It does not deal with the difficulty of advance. We have suggested that there should be a time limit, and within that time India's advance should pass into India's hands. You will not get a time-table worked for if there is not a time-table in existence. I am

Bill contains no power of advance.

**No work-
able time-
table of
political
progress**

quite certain that we shall have to lay down a time-table if we want to get a move made with regard to Indianisation. That is a very difficult obstacle to get over, and it is not really faced in the Bill. It is simply left, and that means that the Bill contains no seed of advance. It is recognised as only a temporary instalment given by this Government to India. I held the view when I was a member of the Simon Commission, and I still hold the view, that there are very great dangers in a merely temporary constitution. It has all the disadvantages and none of the advantages of a permanent constitution.

**Question of
franchise**

As I held then, and as my colleagues held then, you must have the seeds of advance in the Bill. That is not provided for, and I do not see that it is possible to be provided for in the Instrument of Instructions, except in a very minor degree. I cannot discuss the question of representation, because the Bill does not give the basis of representation. It does not give us the franchise, but we know the franchise is not as wide as we would wish it. We say that in the Bill undue representation is given to vested interests, to land and capital, and only in a very minor degree to labour. We say that land, capital, money will get its representation anyway. What we need is that the weakest members of the community, the workers, the women, the depressed classes should be given political power. The whole basis of the representation in the Bill is to make things safe for the present existing order of society.

**Labour
wants poli-
tical powers
for the
weakest
sections.**

**Are things
satisfactory
in India?**

The difference between the right hon. Member for Epping (Mr. Churchill) and the regular supporters of the Government is only one of degree. The assumption on which all those hon. Members act is that things are fairly satisfactory in India, but that we are to take the very greatest care that they do not go wrong. I say that things are most unsatisfactory in India, and that we want very big changes.

* * * *

The Bill means the retention in India of the capitalist landlord system. Throughout in the Legis-

lature, central and local, care is to be taken to see that private interests are protected. Special protection is given them so that if land is wanted for any reform you may be met with opposition.

Continuation of Capitalist landlord system

Another terrible thing in India is the permanent settlement in Bengal. This is another of the things which we gave to India, and it is difficult under this constitution to overthrow it. We are setting up in India a House of Lords more powerful than our own, and I think even more reactionary in its composition. We are leaving the power of the purse. We are setting up a bank much the same as the Bank of England, and this at a time when persons of all kinds of views say that capitalism is practically done, and that we must have a new system. We are introducing a rigid constitution based on capitalist principles, which is intended to preserve the features of capitalism and landlordism. That is our second great objection to the Bill. You are handing over whatever power you are giving to certain interests, there is no provision for advance, and you are failing to meet the desires of the Indians themselves.

Permanent Settlement

Defects of the Bill

We shall be told that we on this side want to go too fast, that if you hand more to the Indians, they will make a mess of it. India is in a terrible mess in any case, so is the rest of the world, and we think that it is quite impossible to get the real changes which are demanded in India by setting up a constitution which is merely acquiesced in by a certain number of people, which may be worked by a privileged class but which will not be supported by any of the advanced parties in India or any of the people who really want a change. I can understand the attitude of hon. Members opposite. If they really believe that things are satisfactory in India they might want to fill in the Bill with every kind of provision. We do not believe they are satisfactory. We have done some good things for India, but we have done many bad things. The serious thing we have done is that we have maintained the Indian people in a position of irresponsibility. If they were irresponsi-

Bill not accepted by any advanced party in India

Indians must get responsibility for future government of their country.

ble, we were responsible, and they will never learn responsibility without being given responsibility. Indians must take the responsibility for the future government of their country. The Bill does not do that, and we cannot do it, and, therefore, we oppose it.

45. EXTRACTS FROM THE GOVERNMENT OF INDIA ACT, 1935.

[On December 12, 1934, a motion that a Bill should be submitted to Parliament on the lines of the Joint Parliamentary Committee's Report was carried in both Houses of Parliament. On December 19, 1934, the Bill was introduced by Sir Samuel Hoare "The passage of the Bill through the House of Commons resulted in certain changes of considerable, though not primary importance". In the House of Lords only one vital change was made with the assent of the Government. The Bill received the Royal Assent on August 4, 1935. The Act came into force on April 1, 1937, except Part II (Federation) and Part VII (Federal Railway Authority).]

Part I

Introductory

The Governor-General of India and His Majesty's Representative as regards relations with Indian States.

3.—(1) The Governor-General of India is appointed by His Majesty by a Commission under the Royal Sign Manual and has—

(a) all such powers and duties as are conferred or imposed on him by or under this Act; and

(b) such other powers of His Majesty, not being powers connected with the exercise of the functions of the Crown in its relations with Indian States, as His Majesty may be pleased to assign to him.

(2) His Majesty's Representative for the exercise of the functions of the Crown in its relations with Indian States is appointed by His Majesty in like manner and has such powers and duties in connection with the exercise of those functions (not being powers or duties conferred or imposed by or under this Act

1 See Keith, *Constitutional History of India*, pp 311-319.

(or the Governor-General) as His Majesty may be pleased to assign to him.

(3) It shall be lawful for His Majesty to appoint one person to fill both the said offices.

Part II

The Federation of India.

5.—(1) It shall be lawful for His Majesty, if an address in that behalf has been presented to him by each House of Parliament and if the condition hereinafter mentioned is satisfied, to declare by Proclamation that as from the day therein appointed there shall be united in a Federation under the Crown, by the name of the Federation of India,—

Proclamation of Federation

(a) the Provinces hereinafter called Governors' Provinces; and

(b) the Indian States which have acceded or may thereafter accede to the Federation;

and in the Federation so established there shall be included the Provinces hereinafter called Chief Commissioners' Provinces.

(2) The condition referred to is that States—

(a) the Rulers whereof will, in accordance with the provisions contained in Part II of the First Schedule to this Act, be entitled to choose not less than fifty-two members of the Council of State; and

(b) the aggregate population whereof, as ascertained in accordance with the said provisions, amounts to at least one-half of the total population of the States, as so ascertained,

have acceded to the Federation.

6.—(1) A State shall be deemed to have acceded to the Federation if His Majesty has signified his acceptance of an Instrument of Accession executed by the Ruler thereof, whereby the Ruler for himself, his heirs and successors—

Accession of Indian States

(a) declares that he accedes to the Federation as established under this Act, with

the intent that His Majesty the King, the Governor-General of India, the Federal Legislature, the Federal Court and any other Federal authority established for the purposes of the Federation shall, by virtue of his Instrument of Accession, but subject always to the terms thereof, and for the purposes only of the Federation, exercise in relation to his State such functions as may be vested in them by or under this Act; and

- (b) assumes the obligation of ensuring that due effect is given within his State to the provisions of this Act so far as they are applicable therein by virtue of his Instrument of Accession :

Provided that an Instrument of Accession may be executed conditionally on the establishment of the Federation on or before a specified date, and in that case the State shall not be deemed to have acceded to the Federation if the Federation is not established until after that date.

(2) An Instrument of Accession shall specify the matters which the Ruler accepts as matters with respect to which the Federal Legislature may make laws for his State, and the limitations, if any, to which the power of the Federal Legislature to make laws for his State and the exercise of the executive authority of the Federation in his State, are respectively to be subject.

(3) A Ruler may, by a supplementary Instrument executed by him and accepted by His Majesty, vary the Instrument of Accession of his State by extending the functions which by virtue of that Instrument are exercisable by His Majesty or any Federal Authority in relation to his State.

(4) Nothing in this section shall be construed as requiring His Majesty to accept any Instrument of Accession or supplementary Instrument unless he considers it proper so to do, or as empowering His Majesty to accept any such Instrument if it appears to

him that the terms thereof are inconsistent with the scheme of Federation embodied in this Act :

Provided that after the establishment of the Federation, if any Instrument has in fact been accepted by His Majesty, the validity of that Instrument or of any of its provisions shall not be called in question and the provisions of this Act shall, in relation to the State, have effect subject to the provisions of the Instrument.

(5) It shall be a term of every Instrument of Accession that the provisions of this Act mentioned in the Second Schedule thereto may, without affecting the accession of the State, be amended by or by authority of Parliament, but no such amendment shall, unless it is accepted by the Ruler in a supplementary Instrument, be construed as extending the functions which by virtue of the Instrument are exercisable by His Majesty or any Federal Authority in relation to the State.

(6) An Instrument of Accession or supplementary Instrument shall not be valid unless it is executed by the Ruler himself, but, subject as aforesaid, references in this Act to the Ruler of a State include references to any persons for the time being exercising the powers of the Ruler or the State whether by reason of the Ruler's minority or for any other reason.

(7) After the establishment of the Federation the request of a Ruler that his State may be admitted to the Federation shall be transmitted to His Majesty through the Governor-General, and after the expiration of twenty years from the establishment of the Federation the Governor-General shall not transmit to His Majesty any such request until there has been presented to him by each Chamber of the Federal Legislature, for submission to His Majesty, an address praying that His Majesty may be pleased to admit the State into the Federation.

* * * *

7.—(1) Subject to the provisions of this Act, the executive authority of the Federation shall be

**Functions
of
Governor-
General**

exercised on behalf of His Majesty by the Governor-General, either directly or through officers subordinate to him, but nothing in this section shall prevent the Federal Legislature from conferring functions upon subordinate authorities, or be deemed to transfer to the Governor-General any functions conferred by any existing Indian law on any court, judge or officer, or on any local or other authority.

**Extent of
executive
authority
of the
Federation**

8. (1) Subject to the provisions of this Act, the executive authority of the Federation extends—

- (a) to the matters with respect to which the Federal Legislature has power to make laws;
- (b) to the raising in British India on behalf of His Majesty of naval, military and air forces and to the governance of His Majesty's forces borne on the Indian establishment;
- (c) to the exercise of such rights, authority and jurisdiction as are exercisable by His Majesty by treaty, grant, usage, sufferance, or otherwise in and in relation to the tribal areas;

Provided that—

- (i) the said authority does not, save as expressly provided in this Act, extend in any Province to matters with respect to which the Provincial Legislature has power to make laws;
- (ii) the said authority does not, save as expressly provided in this Act, extend in any Federated State save to matters with respect to which the Federal Legislature has power to make laws for that State, and the exercise thereof in each State shall be subject to such limitations, if any, as may be specified in the Instrument of Accession of the State;
- (iii) the said authority does not extend to the enlistment or enrolment in any forces raised in India of any person unless he

is either a subject of His Majesty or a native of India or of territories adjacent to India; and

- (iv) commissions in any such force shall be granted by His Majesty save in so far as he may be pleased to delegate that power by virtue of the provisions of Part I of this Act or otherwise.

(2) The executive authority of the Ruler of a Federated State shall, notwithstanding anything in this section, continue to be exercisable in that State with respect to matters with respect to which the Federal Legislature has power to make laws for that State except in so far as the executive authority of the Federation becomes exercisable in the State to the exclusion of the executive authority of the Ruler by virtue of a Federal law.

Administration of Federal Affairs.

9.—(1) There shall be a council of ministers, not exceeding ten in number, to aid and advise the Governor-General in the exercise of his functions, except in so far as he is by or under this Act required to exercise his functions or any of them in his discretion:

**Council of
ministers**

Provided that nothing in this sub-section shall be construed as preventing the Governor-General from exercising his individual judgment in any case where by or under this Act he is required so to do

(2) The Governor-General in his discretion may preside at meetings of the council of ministers.

(3) If any question arises whether any matter is or is not a matter as respects which the Governor-General is by or under this Act required to act in his discretion or to exercise his individual judgment, the decision of the Governor-General in his discretion shall be final, and the validity of anything done by the Governor-General shall not be called in question on the ground that he ought or ought not to have acted in his discretion, or ought or ought not to have exercised his individual judgment.

Other
provisions
as to
ministers

10—(1) The Governor-General's ministers shall be chosen and summoned by him, shall be sworn members of the council, and shall hold office during his pleasure.

(2) A minister who for any period of six consecutive months is not a member of either Chamber of the Federal Legislature shall at the expiration of that period cease to be a minister.

(3) The salaries of ministers shall be such as the Federal Legislature may from time to time by Act determine and, until the Federal Legislature so determine, shall be determined by the Governor-General.

Provided that the salary of a minister shall not be varied during his term of office.

(4) The question whether any and, if so, what advice was tendered by ministers to the Governor-General shall not be inquired into in any court.

(5) The functions of the Governor-General with respect to the choosing and summoning and the dismissal of ministers, and with respect to the determination of their salaries, shall be exercised by him in his discretion.

Provisions
as to
defence,
ecclesiastical
affairs,
external
affairs and
the tribal
areas

11—(1) The functions of the Governor-General with respect to defence and ecclesiastical affairs and with respect to external affairs, except the relations between the Federation and any part of His Majesty's dominions, shall be exercised by him in his discretion, and his functions in or in relation to the tribal areas shall be similarly exercised.

(2) To assist him in the exercise of those functions the Governor-General may appoint counsellors, not exceeding three in number, whose salaries and conditions of service shall be such as may be prescribed by His Majesty in Council.

Special
responsibilities
of
Governor-
General

12—(1) In the exercise of his functions the Governor-General shall have the following special responsibilities, that is to say,—

(a) the prevention of any grave menace to the peace or tranquillity of India or any part thereof;

(b) the safeguarding of the financial stability and credit of the Federal Government;

(c) the safeguarding of the legitimate interests of minorities;

(d) the securing to, and to the dependants of, persons who are or have been members of the public services of any rights provided or preserved for them by or under this Act and the safeguarding of their legitimate interests;

(e) the securing in the sphere of executive action of the purposes which the provisions of Chapter III of Part V of this Act¹ are designed to secure in relation to legislation;

(f) the prevention of action which would subject goods of United Kingdom or Burmese origin imported into India to discriminatory or penal treatment;

(g) the protection of the rights of any Indian State and the rights and dignity of the Ruler thereof; and

(h) the securing that the due discharge of his functions with respect to matters with respect to which he is by or under this Act required to act in his discretion, or to exercise his individual judgment, is not prejudiced or impeded by any course of action taken with respect to any other matter.

(2) If and in so far as any special responsibility of the Governor-General is involved, he shall in the exercise of his functions exercise his individual judgment as to the action to be taken.

13.—(1) The Secretary of State shall lay before Parliament the draft of any Instrument of Instructions (including any Instrument amending or revoking an Instrument previously issued) which it is proposed to recommend His Majesty to issue to the Governor-General, and no further proceedings shall be taken in relation thereto except in pursuance of an address presented to His Majesty by both Houses of Parliament praying that the Instrument may be issued.

**Provisions
as to Instru-
ment of
Instructions**

(2) The validity of anything done by the Governor-General shall not be called in question on the

ground that it was done otherwise than in accordance with any Instrument of Instructions issued to him.

Superintendence of Secretary of State

14.—(1) In so far as the Governor-General by or under this Act required to act in his discretion or to exercise his individual judgment, he shall be under the general control of, and comply with such particular directions, if any, as may from time to time be given to him by the Secretary of State, but the validity of anything done by the Governor-General shall not be called in question on the ground that it was done otherwise than in accordance with the provisions of this section.

(2) Before giving any directions under this section the Secretary of State shall satisfy himself that nothing in the directions requires the Governor-General to act in any manner inconsistent with any Instrument of Instructions issued to him by His Majesty.

Financial adviser to Governor-General

15.—(1) The Governor-General may appoint a person to be his financial adviser.

(2) It shall be the duty of the Governor-General's financial adviser to assist by his advice the Governor-General in the discharge of his special responsibility for safeguarding the financial stability and credit of the Federal Government, and also to give advice to the Federal Government upon any matter relating to finance with respect to which he may be consulted.

(3) The Governor-General's financial adviser shall hold office during the pleasure of the Governor-General, and the salary and allowances of the financial adviser and the numbers of his staff and their conditions of service shall be such as the Governor-General may determine.

(4) The powers of the Governor-General with respect to the appointment and dismissal of a financial adviser, and with respect to the determination of his salary and allowances and the numbers of his staff and their conditions of service, shall be exercised by him in his discretion:

Provided that, if the Governor-General has determined to appoint a financial adviser, he shall, before making any appointment other than the first appointment, consult his ministers as to the person to be selected.

18.—(1) There shall be a Federal Legislature which shall consist of His Majesty, represented by the Governor-General, and two Chambers, to be known respectively as the Council of State and the House of Assembly (in this Act referred to as 'the Federal Assembly').

**Constitution
of the
Federal
Legislature**

(2) The Council of State shall consist of one hundred and fifty-six representatives of British India and not more than one hundred and four representatives of the Indian States, and the Federal Assembly shall consist of two hundred and fifty representatives of British India and not more than one hundred and twenty-five representatives of the Indian States.

(3) The said representatives shall be chosen in accordance with the provisions in that behalf contained in the First Schedule to this Act.

(4) The Council of State shall be a permanent body not subject to dissolution, but as near as may be one-third of the members thereof shall retire in every third year in accordance with the provisions in that behalf contained in the said First Schedule.

(5) Every Federal Assembly, unless sooner dissolved, shall continue for five years from the date appointed for their first meeting and no longer, and the expiration of the said period of five years shall operate as a dissolution of the Assembly.

Procedure in Financial Matters¹

33.—(1) The Governor-General shall in respect of every financial year cause to be laid before both Chambers of the Federal Legislature a statement of the estimated receipts and expenditure of the Federation for that year, in this Part of this Act referred to as the "annual financial statement."

**Annual
financial
statement**

¹ Similar provisions were made in respect of Provincial revenues by Sections 78-80.

(2) The estimates of expenditure embodied in the annual financial statement shall show separately—

- (a) the sums required to meet expenditure described by this Act as expenditure charged upon the revenues of the Federation; and
- (b) the sums required to meet other expenditure proposed to be made from the revenues of the Federation,

and shall distinguish expenditure on revenue account from other expenditure, and indicate the sums, if any, which are included solely because the Governor-General has directed their inclusion as being necessary for the due discharge of any of his special responsibilities.

(3) The following expenditure shall be expenditure charged on the revenues of the Federation :—

- (a) the salary and allowances of the Governor-General and other expenditure relating to his office for which provision is required to be made by Order in Council;
- (b) debt charges for which the Federation is liable, including interest, sinking fund charges, and other expenditure relating to the raising of loans and the service and redemption of debt;
- (c) the salaries and allowances of ministers, of counsellors, of the financial adviser, of the advocate-general, of chief commissioners, and of the staff of the financial adviser;
- (d) the salaries, allowances and pensions payable to or in respect of judges of the Federal Court, and the pensions payable to or in respect of judges of any High Court;
- (e) expenditure for the purpose of the discharge by the Governor-General of his functions with respect to defence and ecclesiastical affairs, his functions with respect to external affairs in so far as he

is by or under this Act required in the exercise thereof to act in his discretion, his functions in or in relation to tribal areas, and his functions in relation to the administration of any territory in the direction and control of which he is under this Act required to act in his discretion

- (f) the sums payable to His Majesty under this Act out of the revenues of the Federation in respect of the expenses incurred in discharging the functions of the Crown in its relations with Indian States ;
- (g) any grants for purposes connected with the administration of any areas in a Province which are for the time being excluded areas ,
- (h) any sums required to satisfy any judgment, decree or award of any court or arbitral tribunal ,
- (i) any other expenditure declared by this Act or any Act of the Federal Legislature to be so charged

(4) Any question whether any proposed expenditure falls within a class of expenditure charged on the revenues of the Federation shall be decided by the Governor-General in his discretion.

31.—(1) So much of the estimates of expenditure as relates to expenditure charged upon the revenues of the Federation shall not be submitted to the vote of the Legislature, but nothing in this sub-section shall be construed as preventing the discussion in other Chamber of the Legislature of any of those estimates other than estimates relating to expenditure referred to in paragraph (a) or paragraph (f) of sub-section (3) of the last preceding section.

**Procedure in
Legislature
with respect
to estimates**

(2) So much of the said estimates as relates to other expenditure shall be submitted in the form of demands for grants to the Federal Assembly and thereafter to the Council of State, and either Chamber

shall have power to assent or to refuse assent to any demand, or to assent to any demand subject to a reduction of the amount specified therein:

* * * * *

(4) No demand for a grant shall be made except on the recommendation of the Governor-General.

35. (1) if the Chambers have not assented to any demand for a grant or have assented subject to a reduction of the amount specified therein, the Governor-General may, if in his opinion the refusal or reduction would affect the due discharge of any of his special responsibilities, include in the schedule such additional amount, if any, not exceeding the amount of the rejected demand or the reduction, as the case may be, as appears to him necessary in order to enable him to discharge that responsibility.

* * * * *

**Power of
Governor-
General to
promulgate
ordinances
during
recess of
Legislature**

42.—(1) If at any time when the Federal Legislature is not in session the Governor-General is satisfied that circumstances exist which render it necessary for him to take immediate action, he may promulgate such ordinances as the circumstances appear to him to require;

Provided that the Governor-General—

(a) shall exercise his individual judgment as respects the promulgation of any ordinance under this section if a Bill containing the same provisions would under this Act have required his previous sanction to the introduction thereof into the Legislature; and

(b) shall not, without instructions from His Majesty, promulgate any such ordinance if he would have deemed it necessary to reserve a Bill containing the same provisions for the signification of His Majesty's pleasure thereon.

(2) An ordinance promulgated under this section shall have the same force and effect as an Act of the Federal Legislature assented to by the Governor-General, but every such ordinance—

(a) shall be laid before the Federal Legislature and shall cease to operate at the expiration of six

weeks from the reassembly of the Legislature, or, if before the expiration of that period resolutions disapproving it are passed by both Chambers, upon the passing of the second of those resolutions;

(b) shall be subject to the provisions of this Act relating to the power of His Majesty to disallow Acts as if it were an Act of the Federal Legislature assented to by the Governor-General, and

(c) may be withdrawn at any time by the Governor-General.

(3) If and so far as an ordinance under this section makes any provision which the Federal Legislature would not under this Act be competent to enact, it shall be void.

43. (1) If at any time the Governor-General is satisfied that circumstances exist which render it necessary for him to take immediate action for the purpose of enabling him satisfactorily to discharge his functions in so far as he is by or under this Act required in the exercise thereof to act in his discretion or to exercise his individual judgment, he may promulgate such ordinances as in his opinion the circumstances of the case require.

Power of Governor-General to promulgate ordinances at any time with respect to certain subjects

(2) An ordinance promulgated under this section shall continue in operation for such period not exceeding six months as may be specified therein, but may by a subsequent ordinance be extended for a further period not exceeding six months.

(3) An ordinance promulgated under this section shall have the same force and effect as an Act of the Federal Legislature assented to by the Governor-General, but every such ordinance—

(a) shall be subject to the provisions of this Act relating to the power of His Majesty to disallow Acts as if it were an Act of the Federal Legislature assented to by the Governor-General;

(b) may be withdrawn at any time by the Governor-General; and

(c) if it is an ordinance extending a previous ordinance for a further period, shall be communicated

forthwith to the Secretary of State and shall be laid by him before each House of Parliament.

(4) If and so far as an ordinance under this section makes any provision which the Federal Legislature would not under this Act be competent to enact, it shall be void.

(5) The functions of the Governor-General under this section shall be exercised by him in his discretion.

Power of Governor-General in certain circumstances to enact Acts

44. (1) If at any time it appears to the Governor-General that, for the purpose of enabling him satisfactorily to discharge his functions in so far as he is by or under this Act required in the exercise thereof to act in his discretion or to exercise his individual judgment, it is essential that provision should be made by legislation, he may by message to both Chambers of the Legislature explain the circumstances which in his opinion render legislation essential, and either—

(a) enact forthwith, as a Governor-General's Act, a Bill containing such provisions as he considers necessary; or

(b) attach to his message a draft of the Bill which he considers necessary.

(2) Where the Governor-General takes such action as is mentioned in paragraph (b) of the preceding sub-section, he may at any time after the expiration of one month enact, as a Governor-General's Act, the Bill proposed by him to the Chambers either in the form of the draft communicated to them or with such amendments as he deems necessary, but before so doing he shall consider any address which may have been presented to him within the said period by either Chamber with reference to the Bill or to amendments suggested to be made therein.

(3) A Governor-General's Act shall have the same force and effect, and shall be subject to disallowance in the same manner, as an Act of the Federal Legislature assented to by the Governor-General and, if and in so far as a Governor-General's

Act makes any provision which the Federal Legislature would not under this Act be competent to enact, it shall be void.

(4) Every Governor-General's Act shall be communicated forthwith to the Secretary of State and shall be laid by him before each House of Parliament.

(5) The functions of the Governor-General under this section shall be exercised by him in his discretion.

45. (1) If at any time the Governor-General is satisfied that a situation has arisen in which the government of the Federation cannot be carried on in accordance with the provisions of this Act, he may by Proclamation—

Power of Governor-General to issue Proclamations

(a) declare that his functions shall to such extent as may be specified in the Proclamation be exercised by him in his discretion,

(b) assume to himself all or any of the powers vested in or exercisable by any Federal body or authority,

and any such Proclamation may contain such incidental and consequential provisions as may appear to him to be necessary or desirable for giving effect to the objects of the Proclamation, including provisions for suspending in whole or in part the operation of any provisions of this Act relating to any Federal body or authority:

Provided that nothing in this subsection shall authorise the Governor-General to assume to himself any of the powers vested in or exercisable by the Federal Court or to suspend, either in whole or in part, the operation of any provision of this Act relating to the Federal Court.

(2) Any such Proclamation may be revoked or varied by a subsequent Proclamation.

(3) A Proclamation issued under this section—

(a) shall be communicated forthwith to the Secretary of State and shall be laid by him before each House of Parliament;

(b) unless it is a Proclamation revoking a previous Proclamation, shall cease to operate at the expiration of six months:

Provided that, if and so often as a resolution approving the continuance in force of such a Proclamation is passed by both Houses of Parliament, the Proclamation shall, unless revoked, continue in force for a further period of twelve months from the date on which under this sub-section it would otherwise have ceased to operate.

(4) If at any time the government of the Federation has for a continuous period of three years been carried on under and by virtue of a Proclamation issued under this section, then, at the expiration of that period, the Proclamation shall cease to have effect and the government of the Federation shall be carried on in accordance with the other provisions of this Act, subject to any amendment thereof which Parliament may deem it necessary to make, but nothing in this sub-section shall be construed as extending the power of Parliament to make amendments in this Act without affecting the accession of a State.

(5) If the Governor-General, by a Proclamation under this section, assumes to himself any power of the Federal Legislature to make laws, any law made by him in the exercise of that power shall, subject to the terms thereof, continue to have effect until two years have elapsed from the date on which the Proclamation ceases to have effect, unless sooner repealed or re-enacted by Act of the Appropriate Legislature, and any reference in this Act to Federal Acts, Federal laws, or Acts or laws of the Federal Legislature shall be construed as including a reference to such a law.

(6) The functions of the Governor-General under this section shall be exercised by him in his discretion.

PART III**The Governors' Provinces'**

* * * * *

48. (1) The Governor of a Province is appointed **Appoint-**
His Majesty by a Commission under the Royal **ment of**
Governor
Sign Manual.

(2) The provisions of the Third Schedule to this Act shall have effect with respect to the salary and allowances of the Governor and the provision to be made for enabling him to discharge conveniently and with dignity the duties of his office

49. (1) The executive authority of a Province shall be exercised on behalf of His Majesty by the Governor, either directly or through officers subordinate to him, but nothing in this section shall prevent the Federal or the Provincial Legislature from conferring functions upon subordinate authorities, or be deemed to transfer to the Governor any functions conferred by any existing Indian law on any court, judge or officer or any local or other authority **Executive authority of Province**

(2) Subject to the provisions of this Act, the executive authority of each Province extends to the matters with respect to which the Legislature of the Province has power to make laws

Administration of Provincial Affairs

50. (1) There shall be a council of ministers to aid and advise the Governor in the exercise of his functions, except in so far as he is by or under this Act required to exercise his functions or any of them in his discretion **Council of ministers**

Provided that nothing in this sub-section shall be construed as preventing the Governor from exercising his individual judgment in any case where by or under this Act he is required so to do.

(2) The Governor in his discretion may preside at meetings of the council of ministers.

1 Madras, Bombay, Bengal, the United Provinces, the Punjab, Bihar, the Central Provinces and Berar, Assam, the N.W.F.P., Orissa, Sind.

(3) If any question arises whether any matter is or is not a matter as respects which the Governor is by or under this Act required to act in his discretion or to exercise his individual judgment, the decision of the Governor in his discretion shall be final, and the validity of anything done by the Governor shall not be called in question on the ground that he ought or ought not to have acted in his discretion, or ought not to have exercised his individual judgment.

**Other
provisions
as to
ministers**

51.—(1) The Governor's ministers shall be chosen and summoned by him, shall be sworn as members of the council, and shall hold office during his pleasure.

(2) A minister who for any period of six consecutive months is not a member of the Provincial Legislature shall at the expiration of that period cease to be a minister.

(3) The salaries of ministers shall be such as the Provincial Legislature may from time to time by Act determine and, until the Provincial Legislature so determine, shall be determined by the Governor;

Provided that the salary of a minister shall not be varied during his term of office

(4) The question whether any, and if so what, advice was tendered by ministers to the Governor shall not be inquired into in any court.

(5) The functions of the Governor under this section with respect to the choosing and summoning and the dismissal of ministers, and with respect to the determination of their salaries, shall be exercised by him in his discretion.

**Special
responsibilities of
Governor**

52.—(1) In the exercise of his functions the Governor shall have the following special responsibilities, that is to say:—

- (a) the prevention of any grave menace to the peace or tranquillity of the Province or any part thereof;
- (b) the safeguarding of the legitimate interests of minorities;

- (c) the securing to, and to the dependants of, persons who are or have been members of the public services of any rights provided or preserved for them by or under this Act, and the safeguarding of their legitimate interests;
- (d) the securing in the sphere of executive action of the purposes which the provisions of Chapter III of Part V of this Act¹ are designed to secure in relation to legislation;
- (e) the securing of the peace and good government of areas which by or under the provisions of this Part of this Act are declared to be partially excluded areas;
- (f) the protection of the rights of any Indian State and the rights and dignity of the Ruler thereof, and
- (g) the securing of the execution of orders or directions lawfully issued to him under Part VI of this Act² by the Governor-General in his discretion.

(2) The Governor of the Central Provinces and Berar shall also have the special responsibility of securing that a reasonable share of the revenues of the Province is expended in or for the benefit of Berar, the Governor of any Province which includes an excluded area shall also have the special responsibility of securing that the due discharge of his functions in respect of excluded areas is not prejudiced or impeded by any course of action taken with respect to any other matter, any Governor who is discharging any functions as agent for the Governor-General shall also have the special responsibility of securing that the due discharge of those functions is not prejudiced or impeded by any course of action taken with respect to any other matter, and the Governor of Sind shall also have the special respon-

1 Sections 111-121.

2 Sections 122-135.

sibility of securing the proper administration of the Lloyd Barrage and Canals Scheme.

(3) If and in so far as any special responsibility of the Governor is involved, he shall, in the exercise of his functions, exercise his individual judgment as to the action to be taken.

**Provisions
as to
Instrument
of
Instructions**

53.—(1) The Secretary of State shall lay before Parliament the draft of any Instructions (including any Instructions amending or revoking Instructions previously issued) which it is proposed to recommend His Majesty to issue to the Governor of a Province, and no further proceedings shall be taken in relation thereto except in pursuance of an address presented to His Majesty by both Houses of Parliament praying that the Instructions may be issued.

(2) The validity of anything done by the Governor of a Province shall not be called in question on the ground that it was done otherwise than in accordance with any Instrument of Instructions issued to him.

**Superin-
tendence of
Governor-
General**

54.—(1) In so far as the Governor of a Province by or under this Act required to act in his discretion or to exercise his individual judgment, he shall be under the general control of, and comply with such particular directions, if any, as may from time to time be given to him by, the Governor-General in his discretion, but the validity of anything done by a Governor shall not be called in question on the ground that it was done otherwise than in accordance with the provisions of this section.

(2) Before giving any directions under this section, the Governor-General shall satisfy himself that nothing in the directions requires the Governor to act in any manner inconsistent with any Instrument of Instructions issued to the Governor by His Majesty.

**Provisions
as to Police
rules**

56. Where it is proposed that the Governor of a Province should by virtue of any powers

sted in him make or amend, or approve the making amendment of, any rules, regulations or orders relating to any police force, whether civil or military, shall exercise his individual judgment with respect to the proposal, unless it appears to him that the proposal does not relate to or affect the organisation or discipline of that force.

57.—(1) If it appears to the Governor of a Province that the peace or tranquillity of the Province is endangered by the operations of any persons committing, or conspiring, preparing or attempting to commit crimes of violence which, in the opinion of the Governor, are intended to overthrow the Government as by law established, the Governor may, if he thinks that the circumstances of the case require him so to do for the purpose of combating those operations, direct that his functions shall, to such extent as may be specified in the direction, be exercised by him in his discretion and, until otherwise provided by a subsequent direction of the Governor, those functions shall to that extent be exercised by him accordingly.

**Provisions
as to crimes
of violence
intended to
overthrow
Govern-
ment**

(2) While any such direction is in force, the Governor may authorise an official to speak in and otherwise take part in the proceedings of the Legislature, and any official so authorised may speak and take part accordingly; in the proceedings of the Chamber or Chambers of the Legislature, any joint sitting of the Chambers, and any committee of the Legislature of which he may be named a member by the Governor, but shall not be entitled to vote.

(3) The functions of the Governor under this section shall be exercised by him in his discretion.

(4) Nothing in this section affects the special responsibility of the Governor for the prevention of any grave menace to the peace or tranquillity of the Province or any part thereof.

58. The Governor in his discretion shall make rules for securing that no records or information relating to the sources from which information has been disclosed

**Sources of
certain
information
not to be
disclosed**

been or may be obtained with respect to the operations of persons committing, or conspiring, preparing, or attempting to commit, such crimes as are mentioned in the last preceding section, shall be disclosed or given—

- (a) by any member of any police force in the Province to another member of that force except in accordance with directions of the Inspector-General of Police or Commissioner of Police, as the case may be, or to any other person except in accordance with directions of the Governor in his discretion; or
- (b) by any other person in the service of the Crown in the Province to any person except in accordance with directions of the Governor in his discretion.

**Conduct of
business of
Provincial
Govern-
ment**

59.—(1) All executive action of the Government of a Province shall be expressed to be taken in the name of the Governor.

(2) Orders and other instruments made and executed in the name of the Governor shall be authenticated in such manner as may be specified in rules to be made by the Governor, and the validity of an order or instrument which is so authenticated shall not be called in question on the ground that it is not an order or instrument made or executed by the Governor.

(3) The Governor shall make rules for the more convenient transaction of the business of the Provincial Government, and for the allocation among ministers of the said business in so far as it is not business with respect to which the Governor is by or under this Act required to act in his discretion.

(4) The rules shall include provisions requiring ministers and secretaries to Government to transmit to the Governor all such information with respect to the business of the Provincial Government as may be specified in the rules, or as the Governor may otherwise require to be so transmitted, and in

particular requiring a minister to bring to the notice of the Governor, and the appropriate secretary to bring to the notice of the minister concerned and of the Governor, any matter under consideration by him which involves, or appears to him likely to involve, any special responsibility of the Governor.

(5) In the discharge of his functions under subsections (2), (3) and (4) of this section the Governor shall act in his discretion after consultation with his ministers.

60.—(1) There shall for every Province be a Provincial Legislature which shall consist of His Majesty, represented by the Governor, and

Constitution of Provincial Legislature

(a) in the Provinces of Madras, Bombay, Bengal, the United Provinces, Bihar and Assam, two Chambers,

(b) in other Provinces, one Chamber

(2) Where there are two Chambers of a Provincial Legislature, they shall be known respectively as the Legislative Council and the Legislative Assembly and where there is only one Chamber, the Chamber shall be known as the Legislative Assembly.

61.—(1) The composition of the Chamber or Chambers of the Legislature of a Province shall be such as is specified in relation to that Province in the Fifth Schedule to this Act

Composition of Chambers of Provincial Legislatures

(2) Every Legislative Assembly of every Province, unless sooner dissolved, shall continue for five years from the date appointed for their first meeting and no longer, and the expiration of the said period of five years shall operate as a dissolution of the Assembly.

(3) Every Legislative Council shall be a permanent body not subject to dissolution, but as near as may be one-third of the members thereof shall retire in every third year in accordance with the provision in that behalf made in relation to the Province under the said Fifth Schedule.

* * * * *

88.—(1) If at any time when the Legislature of a Province is not in session the Governor is satis-

**Power of
Governor
to promul-
gate
ordinances
during
recess of
Legislature**

fied that circumstances exist which render it necessary for him to take immediate action, he may promulgate such ordinances as the circumstances appear to him to require:

Provided that the Governor—

(a) shall exercise his individual judgment as respects the promulgation of any ordinance under this section, if a Bill containing the same provisions would under this Act have required his or the Governor-General's previous sanction to the introduction thereof into the Legislature; and

(b) shall not without instructions from the Governor-General, acting in his discretion, promulgate any such ordinance, if a Bill containing the same provisions would under this Act have required the Governor-General's previous sanction for the introduction thereof into the Legislature, or if he would have deemed it necessary to reserve a Bill containing the same provisions for the consideration of the Governor-General

(2) An ordinance promulgated under this section shall have the same force and effect as an Act of the Provincial Legislature assented to by the Governor, but every such ordinance—

(a) shall be laid before the Provincial Legislature and shall cease to operate at the expiration of six weeks from the re-assembly of the Legislature, or if a resolution disapproving it is passed by the Legislative Council, if any, upon the passing of the resolution or, as the case may be, on the resolution being agreed to by the Council;

(b) shall be subject to the provisions of this Act relating to the power of His Majesty to disallow Acts as if it were an Act of the Provincial Legislature assented to by the Governor; and

(c) may be withdrawn at any time by the Governor.

(3) If and so far as an ordinance under this section makes any provision which would not be valid if enacted in an Act of the Provincial Legislature assented to by the Governor, it shall be void.

89. (1) If at any time the Governor of a Province is satisfied that circumstances exist which render it necessary for him to take immediate action for the purpose of enabling him satisfactorily to discharge his functions in so far as he is by or under this Act required in the exercise thereof to act in his discretion or to exercise his individual judgment, he may promulgate such ordinances as in his opinion the circumstances of the case require.

Power of Governor to promulgate ordinances at any time with respect to certain subjects

(2) An ordinance promulgated under this section shall continue in operation for such period not exceeding six months as may be specified therein, but may by a subsequent ordinance be extended for a further period not exceeding six months.

(3) An ordinance promulgated under this section shall have the same force and effect as an Act of the Provincial Legislature assented to by the Governor, but every such ordinance—

(a) shall be subject to the provisions of this Act relating to the power of His Majesty to disallow Acts as if it were an Act of the Provincial Legislature;

(b) may be withdrawn at any time by the Governor; and

(c) if it is an ordinance extending a previous ordinance for a further period, shall be communicated forthwith through the Governor-General to the Secretary of State and shall be laid by him before each House of Parliament.

(4) If and so far as an ordinance under this section makes any provision which would not be valid if enacted in an Act of the Provincial Legislature, it shall be void:

Provided that for the purposes of the provisions of this Act relating to the effect of an Act of a Provincial Legislature which is repugnant to an Act of the Federal Legislature, an ordinance promulgated under this section shall be deemed to be an Act of the Provincial Legislature which has been reserved for the consideration of the Governor-General and assented to by him.

(5) The functions of the Governor under this section shall be exercised by him in his discretion but he shall not exercise any of his powers thereunder except with the concurrence of the Governor-General in his discretion :

Provided that, if it appears to the Governor that it is impracticable to obtain in time the concurrence of the Governor-General, he may promulgate an ordinance without the concurrence of the Governor-General, but in that case the Governor-General in his discretion may direct the Governor to withdraw the ordinance and the ordinance shall be withdrawn accordingly.

Power of Governor in certain circumstances to enact Acts

90. (1) If at any time it appears to the Governor that, for the purpose of enabling him satisfactorily to discharge his functions in so far as he is by or under this Act required in the exercise thereof to act in his discretion or to exercise his individual judgment, it is essential that provision should be made by legislation, he may by message to the Chamber or Chambers of the Legislature explain the circumstances which in his opinion render legislation essential, and either—

(a) enact forthwith as a Governor's Act a Bill containing such provisions as he considers necessary; or

(b) attach to his message a draft of the Bill which he considers necessary.

(2) Where the Governor takes such action as is mentioned in paragraph (b) of the preceding subsection, he may at any time after the expiration of one month, enact, as a Governor's Act, the Bill proposed by him to the Chamber or Chambers either in the form of the draft communicated to them or with such amendments as he deems necessary, but before so doing he shall consider any address which may have been presented to him within the said period by the Chamber or either of the Chambers with reference to the Bill or to amendments suggested to be made therein.

(3) A Governor's Act shall have the same force and effect, and shall be subject to disallowance in the

same manner, as an Act of the Provincial Legislature assented to by the Governor and, if and so far as it makes any provision which would not be valid if enacted in an Act of that Legislature, shall be void.

Provided that, for the purposes of the provisions of this Act relating to the effect of an Act of a Provincial Legislature which is repugnant to an Act of the Federal Legislature, a Governor's Act shall be deemed to be an Act reserved for the consideration of the Governor-General and assented to by him.

(4) Every Governor's Act shall be communicated forthwith through the Governor-General to the Secretary of State and shall be laid by him before each House of Parliament.

(5) The functions of the Governor under this section shall be exercised by him in his discretion, but he shall not exercise any of his powers thereunder except with the concurrence of the Governor-General in his discretion.

93. (1) If at any time the Governor of a Province is satisfied that a situation has arisen in which the government of the Province cannot be carried on in accordance with the provisions of this Act, he may by Proclamation—

Power of Governor to issue Proclamations

(a) declare that his functions shall, to such extent as may be specified in the Proclamation, be exercised by him in his discretion;

(b) assume to himself all or any of the powers vested in or exercisable by any Provincial body or authority;

and any such Proclamation may contain such incidental and consequential provisions as may appear to him to be necessary or desirable for giving effect to the objects of the Proclamation, including provisions for suspending in whole or in part the operation of any provisions of this Act relating to any Provincial body or authority:

Provided that nothing in this sub-section shall authorise the Governor to assume to himself any of the powers vested in or exercisable by a High Court, or to suspend, either in whole or in part, the operation of any provision of this Act relating to High Courts.

(2) Any such Proclamation may be revoked or varied by a subsequent Proclamation.

(3) A Proclamation under this section—

(a) shall be communicated forthwith to the Secretary of State and shall be laid by him before each House of Parliament;

(b) unless it is a Proclamation revoking a previous Proclamation, shall cease to operate at the expiration of six months;

Provided that, if and so often as a resolution approving the continuance in force of such a Proclamation is passed by both Houses of Parliament, the Proclamation shall, unless revoked, continue in force for a further period of twelve months from the date on which under this sub-section it would otherwise have ceased to operate, but no such Proclamation shall in any case remain in force for more than three years.

(4) If the Governor, by a Proclamation under this section, assumes to himself any power of the Provincial Legislature to make laws, any law made by him in the exercise of that power shall, subject to the terms thereof, continue to have effect until two years have elapsed from the date on which the Proclamation ceases to have effect, unless sooner repealed or re-enacted by Act of the appropriate Legislature, and any reference in this Act to Provincial Acts, Provincial laws, or Acts or laws of a Provincial Legislature shall be construed as including a reference to such a law.

(5) The functions of the Governor under this section shall be exercised by him in his discretion and no Proclamation shall be made by a Governor under this section without the concurrence of the Governor-General in his discretion.

Part V**Legislative Powers**

99.—(1) Subject to the provisions of this Act, the Federal Legislature may make laws for the whole or any part of British India or for any Federated State, and a Provincial Legislature may make laws for the Province or for any part thereof.

**Extent of
Federal
and
Provincial
laws**

(2) Without prejudice to the generality of the powers conferred by the preceding sub-section, no Federal law shall, on the ground that it would have extra-territorial operation, be deemed to be invalid in so far as it applies—

(a) to British subjects and servants of the Crown in any part of India; or

(b) to British subjects who are domiciled in any part of India wherever they may be; or

(c) to, or to persons on, ships or aircraft registered in British India or any Federated State wherever they may be; or

(d) in the case of a law with respect to a matter accepted in the Instrument of Accession of a Federated State as a matter with respect to which the Federal Legislature may make laws for that State, to subjects of that State wherever they may be; or

(e) in the case of a law for the regulation or discipline of any naval, military, or air force raised in British India, to members of, and persons attached to, employed with or following, that force, wherever they may be.

100.—(1) Notwithstanding anything in the two next succeeding sub-sections, the Federal Legislature has, and a Provincial Legislature has not, power to make laws with respect to any of the matters enumerated in List I in the Seventh Schedule to this Act (hereinafter called the "Federal Legislative List").

**Subject
matter of
Federal and
Provincial
laws**

(2) Notwithstanding anything in the next succeeding sub-section, the Federal Legislature, and, subject to the preceding sub-section, a Provincial Legislature

also, have power to make laws with respect to any of the matters enumerated in List III in the said Schedule (hereinafter called the "Concurrent Legislative List").

(3) Subject to the two preceding sub-sections the Provincial Legislature has, and the Federal Legislature has not, power to make laws for a Province or any part thereof with respect to any of the matters enumerated in List II in the said Schedule (hereinafter called the "Provincial Legislative List").

(4) The Federal Legislature has power to make laws with respect to matters enumerated in the Provincial Legislative List except for a Province or any part thereof.

**Extent of
power to
legislate
for States**

101. Nothing in this Act shall be construed as empowering the Federal Legislature to make laws for a Federated State otherwise than in accordance with the Instrument of Accession of that State and any limitations contained therein.

**Power of
Federal
Legislature
to legislate
if an emer-
gency is
proclaimed**

102.—(1) Notwithstanding anything in the preceding sections of this chapter, the Federal Legislature shall, if the Governor-General has in his discretion declared by Proclamation (in this Act referred to as a "Proclamation of Emergency") that a grave emergency exists whereby the security of India is threatened, whether by war or internal disturbance, have power to make laws for a Province or any part thereof with respect to any of the matters enumerated in the Provincial Legislative List:

Provided that no Bill or amendment for the purposes aforesaid shall be introduced or moved without the previous sanction of the Governor-General in his discretion, and the Governor-General shall not give his sanction unless it appears to him that the provision proposed to be made is a proper provision in view of the nature of the emergency.

(2) Nothing in this section shall restrict the power of a Provincial Legislature to make any law which under this Act it has power to make, but if any provision of a Provincial law is repugnant to

any provision of a Federal law which the Federal Legislature has under this section power to make, the Federal law, whether passed before or after the Provincial law, shall prevail, and the Provincial law shall to the extent of the repugnancy, but so long only as the Federal law continues to have effect, be void.

(3) A Proclamation of Emergency—

(a) may be revoked by a subsequent Proclamation;

(b) shall be communicated forthwith to the Secretary of State and shall be laid by him before each House of Parliament; and

(c) shall cease to operate at the expiration of six months, unless before the expiration of that period it has been approved by Resolutions of both Houses of Parliament.

(4) A law made by the Federal Legislature which that Legislature would not but for the issue of a Proclamation of Emergency have been competent to make shall cease to have effect on the expiration of a period of six months after the Proclamation has ceased to operate, except as respects things done or omitted to be done before the expiration of the said period.

103. If it appears to the Legislatures of two or more Provinces to be desirable that any of the matters enumerated in the Provincial Legislative List should be regulated in those Provinces by Act of the Federal Legislature, and if resolutions to that effect are passed by all the Chambers of those Provincial Legislatures, it shall be lawful for the Federal Legislature to pass an Act for regulating that matter accordingly, but any Act so passed may, as respects any Province to which it applies, be amended or repealed by an Act of the Legislature of that Province.

Power of Federal Legislature to legislate for two or more Provinces by consent

104.—(1) The Governor-General may by public notification empower either the Federal Legislature or a Provincial Legislature to enact a law with respect to any matter not enumerated in any of the

Residual powers of legislation

Lists in the Seventh Schedule to this Act, including a law imposing a tax not mentioned in any such list and the executive authority of the Federation or of the Province, as the case may be, shall extend to the administration of any law so made, unless the Governor-General otherwise directs.

(2) In the discharge of his functions under this section the Governor-General shall act in his discretion.

* * * *

Sanction of Governor-General required for certain legislative proposals

108.—(1) Unless the Governor-General in his discretion thinks fit to give his previous sanction there shall not be introduced into, or moved in, either Chamber of the Federal Legislature, any Bill or amendment which—

(a) reveals, amends or is repugnant to any provisions of any Act of Parliament extending to British India, or

(b) repeals, amends or is repugnant to any Governor-General's or Governor's Act, or any ordinance promulgated in his discretion by the Governor-General or a Governor; or

(c) affects matters as respects which the Governor-General is, by or under this Act, required to act in his discretion; or

(d) repeals, amends or affects any Act relating to any police force; or

(e) affects the procedure for criminal proceedings in which European British subjects are concerned; or

(f) subjects persons not resident in British India to greater taxation than persons resident in British India or subjects companies not wholly controlled and managed in British India to greater taxation than companies wholly controlled and managed therein; or

(g) affects the grant of relief from any Federal tax on income in respect of income taxed or taxable in the United Kingdom.

(2) Unless the Governor-General in his discretion thinks fit to give his previous sanction, there shall not be introduced into, or moved in, a Chamber of a Provincial Legislature any Bill or amendment which—

(a) repeals, amends, or is repugnant to any provisions of any Act of Parliament extending to British India; or

(b) repeals, amends or is repugnant to any Governor-General's Act, or any ordinance promulgated in his discretion by the Governor-General; or

(c) affects matters as respects which the Governor-General is by or under this Act, required to act in his discretion; or

(d) affects the procedure for criminal proceedings in which European British subjects are concerned; and unless the Governor of the Province in his discretion thinks fit to give his previous sanction, there shall not be introduced or moved any Bill or amendment which—

(i) repeals, amends or is repugnant to any Governor's Act, or any ordinance promulgated in his discretion by the Governor, or

(ii) repeals, amends or affects any Act relating to any police force.

(3) Nothing in this section affects the operation of any other provision in this Act which requires the previous sanction of the Governor-General or of a Governor to the introduction of any Bill or the moving of any amendment.

* * * *

110. Nothing in this Act shall be taken—

Savings

(a) to affect the power of Parliament to legislate for British India, or any part thereof; or

(b) to empower the Federal Legislature, or any Provincial Legislature—

(i) to make any law affecting the Sovereign or the Royal Family, or the Succession to the Crown, or the sovereignty, dominion or suzerainty of the Crown in any part of India, or the law of British

nationality, or the Army Act, the Air Force Act, or the Naval Discipline Act, or the law of Prize or Prize courts; or

(ii) except in so far as is expressly permitted by any subsequent provisions of this Act, to make any law amending any provision of this Act, or any Order in Council made thereunder, or any rules made under this Act by the Secretary of State, or by the Governor-General or a Governor in his discretion, or in the exercise of his individual judgment; or

(iii) except in so far as is expressly permitted by any subsequent provisions of this Act, to make any law derogating from any prerogative right of His Majesty to grant special leave to appeal from any court

Part VI

Administrative Relations between Federation, Provinces and States.

Obligation
of units and
Federation

122—(1) The executive authority of every Province and Federated State shall be so exercised as to secure respect for the laws of the Federal Legislature which apply in that Province or State.

(2) The reference in sub-section (1) of this section to laws of the Federal Legislature shall, in relation to any Province, include a reference to any existing Indian law applying in that Province.

(3) Without prejudice to any of the other provisions of this Part of this Act, in the exercise of the executive authority of the Federation in any Province or Federated State regard shall be had to the interests of that Province or State.

Governor-
General
may require
Governors
to discharge
certain
functions
as his
agents

123.—(1) The Governor-General may direct the Governor of any Province to discharge as his agent, either generally or in any particular case, such functions in and in relation to the tribal areas as may be specified in the direction.

(2) If in any particular case it appears to the Governor-General necessary or convenient so to do, he may direct the Governor of any Province to dis-

charge as his agent such functions in relation to defence, external affairs, or ecclesiastical affairs as may be specified in the direction.

(8) In the discharge of any such functions the Governor shall act in his discretion.

124—(1) Notwithstanding anything in this Act, the Governor-General may, with the consent of the Government of a Province or the Ruler of a Federated State, entrust either conditionally or unconditionally to that Government or Ruler, or to their respective officers, functions in relation to any matter to which the executive authority of the Federation extends.

Power of Federation to confer powers, etc., on Provinces and States to certain cases

(2) An Act of the Federal Legislature may, notwithstanding that it relates to a matter with respect to which a Provincial Legislature has no power to make laws, confer powers and impose duties upon a Province or officers and authorities thereof.

(3) An Act of the Federal Legislature which extends to a Federated State may confer powers and impose duties upon the State or officers and authorities thereof to be designated for the purpose by the Ruler.

(4) Where by virtue of this section powers and duties have been conferred or imposed upon a Province or Federated State or officers or authorities thereof, there shall be paid by the Federation to the Province or State such sum as may be agreed, or, in default of agreement, as may be determined by an arbitrator appointed by the Chief Justice of India, in respect of any extra costs of administration incurred by the Province or State in connection with the exercise of those powers and duties.

125—(1) Notwithstanding anything in this Act, agreements may, and, if provision has been made in that behalf by the Instrument of Accession of the State, shall be made between the Governor-General and the Ruler of a Federated State for the exercise by the Ruler or his officers of functions in relation to the administration in his State of any law of the Federal Legislature which applies therein.

Administration of Federal Acts in Indian States

(2) An agreement made under this section shall contain provisions enabling the Governor-General in his discretion to satisfy himself, by inspection or otherwise, that the administration of the law to which the agreement relates is carried out in accordance with the policy of the Federal Government and, if he is not so satisfied, the Governor-General, acting in his discretion, may issue such directions to the Ruler as he thinks fit.

(3) All courts shall take judicial notice of any agreement made under this section.

**Control of
Federation
over
Province
in certain
cases**

126 — (1) The executive authority of every Province shall be so exercised as not to impede or prejudice the exercise of the executive authority of the Federation, and the executive authority of the Federation shall extend to the giving of such directions to a Province as may appear to the Federal Government to be necessary for that purpose.

(2) The executive authority of the Federation shall also extend to the giving of directions to a Province as to the carrying into execution therein of any Act of the Federal Legislature which relates to a matter specified in Part II of the Concurrent Legislative List and authorises the giving of such directions.

Provided that a Bill or amendment which proposes to authorise the giving of any such directions as aforesaid shall not be introduced into or moved in either Chamber of the Federal Legislature without the previous sanction of the Governor-General in his discretion.

(3) The executive authority of the Federation shall also extend to the giving of directions to a Province as to the construction and maintenance of means of communication declared in the direction to be of military importance:

Provided that nothing in this sub-section shall be taken as restricting the power of the Federation to construct and maintain means of communication as part of its functions with respect to naval, military and air force works.

(4) If it appears to the Governor-General that in any Province effect has not been given to any directions given under this section, the Governor-General, acting in his discretion, may issue as orders to the Governor of that Province, either the directions previously given or those directions modified in such manner as the Governor-General thinks proper.

(5) Without prejudice to his powers under the last preceding sub-section, the Governor-General, acting in his discretion, may at any time issue orders to the Governor of a Province as to the manner in which the executive authority thereof is to be exercised for the purpose of preventing any grave menace to the peace or tranquility of India or of any part thereof.

* 128.—The executive authority of every Federated State shall be so exercised as not to impede or prejudice the exercise of the executive authority of the Federation so far as it is exercisable in the State by virtue of a law of the Federal Legislature which applies therein.

**Duty of
Ruler of a
State as
respects
Federal
subjects**

(2) If it appears to the Governor-General that the Ruler of any Federated State has in any way failed to fulfil his obligations under the preceding sub-section, the Governor-General acting in his discretion, may after considering any representations made to him by the Ruler issue such directions to the Ruler as he thinks fit:

Provided that, if any question arises under this section as to whether the executive authority of the Federation is exercisable in a State with respect to any matter or as to the extent to which it is so exercisable, the question may, at the instance either of the Federation or the Ruler, be referred to the Federal Court for determination by that Court in the exercise of its original jurisdiction under this Act.

*

*

*

*

Part VIII

The Federal Railway Authority.

Executive authority in respect of railways to be exercised by Federal Railway Authority

181.—(1) The executive authority of the Federation in respect of the regulation and the construction, maintenance and operation of railways shall be exercised by a Federal Railway Authority (hereinafter referred to as "the Authority").

* * * *

Composition &c., of Railway Authority

182.—(1) Not less than three-sevenths of the members of the Authority shall be persons appointed by the Governor-General in his discretion, and the Governor-General shall in his discretion appoint a member of the Authority to be the President thereof.

* * * *

Conduct of business between Railway Authority and Federal Government

184.—(1) The Governor-General exercising his individual judgment, but after consultation with the Authority, may make rules for the more convenient transaction of business arising out of the relations between the Federal Government and the Authority.

* * * *

Part IX

The Judicature

* * *

Original jurisdiction of Federal Court

204.—(1) Subject to the provisions of this Act, the Federal Court shall, to the exclusion of any other court, have an original jurisdiction in any dispute between any two or more of the following parties, that is to say, the Federation, any of the Provinces or any of the Federated States, if and in so far as the dispute involves any question (whether of law or fact) on which the existence or extent of a legal right depends:

Provided that the said jurisdiction shall not extend to—

(a) a dispute to which a State is a party, unless the dispute—

(i) concerns the interpretation of this Act or of an Order in Council made thereunder, or the extent of the legislative or executive authority vested in the

Federation by virtue of the Instrument of Accession of that State, or

(ii) arises under an agreement made under Part VI of this Act in relation to the administration in that State of a law of the Federal Legislature, or otherwise concerns some matter with respect to which the Federal Legislature has power to make laws for that State; or

(iii) arises under an agreement made after the establishment of the Federation, with the approval of His Majesty's Representative for the exercise of the functions of the Crown in its relations with Indian States, between that State and the Federation or a Province, being an agreement which expressly provides that the said jurisdiction shall extend to such a dispute;

(b) a dispute arising under any agreement which expressly provides that the said jurisdiction shall not extend to such a dispute.

(2) The Federal Court in the exercise of its original jurisdiction shall not pronounce any judgment other than a declaratory judgment.

205.—(1) An appeal shall lie to the Federal Court from any judgment, decree or final order of a High Court in British India, if the High Court certifies that the case involves a substantial question of law as to the interpretation of this Act or any Order in Council made thereunder, and it shall be the duty of every High Court in British India to consider in every case whether or not any such question is involved and of its own motion to give or to withhold a certificate accordingly.

Appellate jurisdiction of Federal Court in appeals from High Courts in British India

(2) Where such a certificate is given, any party in the case may appeal to the Federal Court on the ground that any such question as aforesaid has been wrongly decided, and on any ground on which that party could have appealed without special leave to His Majesty in Council if no such certificate had been given, and with the leave of the Federal Court, on

any other ground, and no direct appeal shall lie to His Majesty in Council, either with or without special leave.

**Power of
Federal
Legislature
to enlarge
appellate
jurisdiction**

206.—(1) The Federal Legislature may by Act provide that in such civil cases as may be specified in the Act an appeal shall lie to the Federal Court from a judgment decree or final order of a High Court in British India without any such certificate as aforesaid, but no appeal shall lie under any such Act unless—

(a) the amount or value of the subject matter of the dispute in the court of first instance and still in dispute on appeal was and is not less than fifty thousand rupees or such other sum not less than fifteen thousand rupees as may be specified by the Act, or the judgment decree or final order involves directly or indirectly some claim or question respecting property of the like amount or value; or

(b) the Federal Court gives special leave to appeal.

(2) If the Federal Legislature makes such provision as is mentioned in the last preceding sub-section, consequential provision may also be made by Act of the Federal Legislature for the abolition in whole or in part of direct appeals in civil cases from High Courts in British India to His Majesty in Council, either with or without special leave.

(3) A Bill or amendment for any of the purposes specified in this section shall not be introduced into, or moved in, either Chamber of the Federal Legislature without the previous sanction of the Governor-General in his discretion.

**Appellate
jurisdiction
of Federal
Court in
appeals
from
High
Courts in
Federated
States**

207.—(1) An appeal shall lie to the Federal Court from a High Court in a Federated State on the ground that a question of law has been wrongly decided, being a question which concerns the interpretation of this Act or of an Order in Council made thereunder or the extent of the legislative or executive authority vested in the Federation by virtue of the Instrument of Accession of that State, or arises under

an agreement made under Part VI of this Act¹ in relation to the administration in that State of a law of the Federal Legislature.

(2) An appeal under this section shall be by way of special case to be stated for the opinion of the Federal Court by the High Court, and the Federal Court may return any case so stated in order that further facts may be stated therein.

208. An appeal may be brought to His Majesty in Council from a decision of the Federal Court— **Appeals to His Majesty in Council**

(a) from any judgment of the Federal Court given in the exercise of its original jurisdiction in any dispute which concerns the interpretation of this Act or of an Order in Council made thereunder, or the extent of the legislative or executive authority vested in the Federation by virtue of the Instrument of Accession of any State, or arises under an agreement made under Part VI of this Act¹ in relation to the administration in any State of a law of the Federal Legislature, without leave; and

(b) in any other case, by leave of the Federal Court or of His Majesty in Council

* * * *

213—(1) If at any time it appears to the Governor-General that a question of law has arisen, or is likely to arise, which is of such a nature and of such public importance that it is expedient to obtain the opinion of the Federal Court upon it, he may in his discretion refer the question to that court for consideration, and the court may, after such hearing as they think fit, report to the Governor-General thereon. **Power of Governor-General to consult Federal Court**

(2) No report shall be made under this section save in accordance with an opinion delivered in open court with the concurrence of a majority of the judges present at the hearing of the case, but nothing in this sub-section shall be deemed to prevent a judge who does not concur from delivering a dissenting opinion.

* * * *

Part X

The Services of the Crown in India.

Conditions
of service,
pensions
etc., of
persons
recruited by
Secretary
of State

247.—(1) The conditions of service of all persons appointed to a civil service or a civil post by the Secretary of State shall—

(a) as respects pay, leave and pensions, and general rights in regard to medical attendance, such as may be prescribed by rules to be made by the Secretary of State,

(b) as respects other matters with respect to which express provision is not made by this chapter, be such as may be prescribed by rules to be made by the Secretary of State in so far as he thinks fit to make such rules, and, in so far and so long as provision is not made by such rules, by rules to be made, as respects persons serving in connection with the affairs of the Federation, by the Governor-General or some person or persons authorized by the Governor-General to make rules for the purpose and as respects persons serving in connection with the affairs of a Province, by the Governor of the Province or some person or persons authorised by the Governor to make rules for the purpose:

Provided that no rule made under this sub-section shall have effect so as to give to any person appointed to a civil service or civil post by the Secretary of State less favourable terms as respects remuneration or pension than were given to him by the rules in force on the date on which he was first appointed to his service or was appointed to his post.

(2) Any promotion of any person appointed to a civil service or a civil post by the Secretary of State or any order relating to leave of not less than three months of any such person, or any order suspending any such person from office shall, if he is serving in connection with the affairs of the Federation, be made by the Governor-General exercising his individual judgment and, if he is serving in connection with the affairs of a Province, be made by the Governor exercising his individual judgment.

(3) If any such person as aforesaid is suspended from office, his remuneration shall not during the period of his suspension be reduced except to such extent, if any, as may be directed by the Governor-General exercising his individual judgment or, as the case may be, by the Governor exercising his individual judgment.

(4) The salary and allowances of any such person as aforesaid shall, if he is serving in connection with the affairs of the Federation, be charged on the revenues of the Federation and, if he is serving in connection with the affairs of a Province, be charged on the revenues of the Province :

Provided that, if any such person is serving in connection with the railways in India, so much only of his salary and allowances shall be charged on the revenues of the Federation as is not paid out of the Railway Fund.

(5) Pensions payable to or in respect of any such person as aforesaid, and Government contributions in respect of any such person to any pension fund or provident fund, shall be charged on the revenues of the Federation.

(6) No award of a pension less than the maximum pension allowable under rules made under this section shall be made, except in each case with the consent of the Secretary of State.

(7) No rules made under this section shall be construed to limit or abridge the power of the Secretary of State to deal with the case of any person serving His Majesty in a civil capacity in India in such manner as may appear to him to be just and equitable, and no rules made under this section by any person other than the Secretary of State shall be construed to limit or abridge the power of the Governor-General or, as the case may be, the Governor of a Province to deal with the case of any such person in such manner as may appear to him to be just and equitable :

Provided that, where any rule made under this section is applicable to the case of any person, the

case shall not be dealt with in any manner less favourable to him than that provided by the rule.

Rights in
respect of
complaints,
appeals,
etc.

248. (1) If any person appointed to a civil service or a civil post by the Secretary of State is aggrieved by an order affecting his conditions of service and on due application to the person by whom the order was made does not receive the redress to which he considers himself entitled, he may, without prejudice to any other mode of obtaining redress, complain, if he is serving in connection with the affairs of the Federation, to the Governor-General and, if he is serving in connection with the affairs of a Province, to the Governor of the Province, and the Governor-General or Governor, as the case may be, shall examine into the complaint and cause such action to be taken thereon as appears to him exercising his individual judgment to be just and equitable.

(2) No order which punishes or formally censures any such person as aforesaid, or affects adversely his emoluments or rights in respect of pension, or decides adversely to him the subject-matter of any memorial, shall be made except, if he is serving in connection with the affairs of the Federation, by the Governor-General, exercising his individual judgment, or, if he is serving in connection with the affairs of a Province, by the Governor of that Province, exercising his individual judgment.

(3) Any person appointed to a civil service or a civil post by the Secretary of State may appeal to the Secretary of State against any order made by any authority in India which punishes or formally censures him, or alters or interprets to his disadvantage any rule by which his conditions of service are regulated.

(4) Any sums ordered to be paid out of the revenues of the Federation or a Province to or in respect of any such person as aforesaid on an appeal made under this section shall be charged on those revenues.

INDIAN CONSTITUTIONAL DOCUMENTS

249. (1) If by reason of anything done under this Compensation Act the conditions of service of any person appointed then to a civil service or a civil post by the Secretary of State have been adversely affected, or if for any other reason it appears to the Secretary of State that compensation ought to be granted to, or in respect of, any such person, he or his representatives shall be entitled to receive from the revenues of the Federation, or if the Secretary of State so directs, from the revenues of a Province, such compensation as the Secretary of State may consider just and equitable.

(2) Any sum payable under this section from the revenues of the Federation or the revenues of a Province shall be charged on the revenues of the Federation or, as the case may be, that Province.

(8) For the avoidance of doubt it is hereby declared that the foregoing provisions of this section in no way prohibit expenditure by the Governor-General, or, as the case may be, the Governor, from the revenues of the Federation or a Province by way of compensation to persons who are serving or have served His Majesty in India in cases to which those provisions do not apply.

PART XI

The Secretary of State, His Advisers and His Department

278. (1) There shall be a body of persons **Advisers to Secretary of State** appointed by the Secretary of State, not being less than three nor more than six in number, as the Secretary of State may from time to time determine, whose duty it shall be to advise the Secretary of State on any matter relating to India on which he may desire their advice.

(2) One-half at least of the persons for the time being holding office under this section as advisers of the Secretary of State shall be persons who have held office for at least ten years under the Crown in India and have not last ceased to perform in India official

duties under the Crown more than two years before the date of their respective appointments as advisers under this section.

(3) Any person appointed as an Adviser to the Secretary of State shall hold office for a term of five years and shall not be eligible for reappointment :

Provided that—

(a) any person so appointed may by writing under his hand resign his office to the Secretary of State ;

(b) the Secretary of State may, if he is satisfied that any person so appointed has by reason of infirmity of mind or body become unfit to continue to hold his office, by order remove him from his office.

(4) A person for the time being holding office as adviser to the Secretary of State shall not be capable of sitting or voting in either House of Parliament.

(5) There shall be paid out of moneys provided by Parliament to each of the advisers of the Secretary of State a salary of thirteen hundred and fifty pounds a year, and also to any of them who at the date of his appointment was domiciled in India a subsistence allowance of six hundred pounds a year.

(6) Except as otherwise expressly provided in this Act, it shall be in the discretion of the Secretary of State whether or not he consults with his advisers on any matter, and, if so, whether he consults with them collectively or with one or more of them individually, and whether or not he acts in accordance with any advice given to him by them.

(7) Any provision of this Act which requires that the Secretary of State shall obtain the concurrence of his advisers shall be deemed to be satisfied if at a meeting of his advisers he obtains the concurrence of at least one-half of those present at the meeting, or if such notice and opportunity for objection as may be prescribed has been given to those advisers and none of them has required that a meeting shall be held for discussion of the matter.

In this sub-section "prescribed" means prescribed by rules of business made by the Secretary of State after obtaining at a meeting of his advisers the concurrence of at least one-half of those present at the meeting.

(8) The Council of India as existing immediately before the commencement of Part III of this Act¹ shall be dissolved.

* * * *

PART XII

Miscellaneous And General

The Crown and the Indian States

285. Subject in the case of a Federated State to the provisions of the Instrument of Accession of that State, nothing in this Act affects the rights and obligations of the Crown in relation to any Indian State.

Saving for rights and obligations of the Crown in its relations with Indian States

286. (1) If His Majesty's Representative for the exercise of the functions of the Crown in its relations with Indian States requests the assistance of armed forces for the due discharge of those functions, it shall be the duty of the Governor-General in the exercise of the executive authority of the Federation to cause the necessary forces to be employed accordingly, but the net additional expense, if any, incurred in connection with those forces by reason of that employment shall be deemed to be expenses of His Majesty incurred in discharging the said functions of the Crown.

Use of His Majesty's forces in connection with discharge of the functions of the Crown in its relations with Indian States

(2) In discharging his functions under this section the Governor-General shall act in his discretion.

* * * *

SEVENTH SCHEDULE

Legislative Lists.

LIST I.

FEDERAL LEGISLATIVE LIST.

1. His Majesty's naval, military and air forces borne on the Indian establishment and any other armed force raised in India by the Crown, not being

Sections 100, 104

¹ Sections 46-93.

forces raised for employment in Indian States' or military or armed police maintained by Provincial Governments; any armed forces which are not forces of His Majesty, but are attached to or operating with any of His Majesty's naval, military or air forces borne on the Indian establishment; central intelligence bureau; preventive detention in British India for reasons of State connected with defence, external affairs, or the discharge of the functions of the Crown in its relations with Indian States.

2. Naval, military and air force works, local self-government in cantonment areas (not being cantonment areas of Indian State troops), the regulation of house accommodation in such areas, and, within British India, the delimitation of such areas.

3. External affairs, the implementing of treaties and agreements with other countries; extradition, including the surrender of criminals and accused persons to parts of His Majesty's dominions outside India.

4. Ecclesiastical affairs, including European cemeteries.

5. Currency, coinage and legal tender.

6. Public debt of the Federation.

7. Posts and telegraphs, including telephones, wireless, broadcasting, and other like forms of communication, Post Office Savings Bank.

8. Federal Public Services and Federal Public Service Commission.

9. Federal pensions, that is to say, pensions payable by the Federation or out of Federal revenues.

10. Works, lands and buildings vested in, or in the possession of, His Majesty for the purposes of the Federation (not being naval, military or air force works), but, as regards property situate in a Province, subject always to Provincial legislation, save in so far as Federal law otherwise provides, and, as regards property in a Federated State held by virtue of any lease of agreement with that State, subject to the terms of that lease of agreement.

11. The Imperial Library, the Indian Museum, the Imperial War Museum, the Victoria Memorial,

and any similar institution controlled or financed by the Federation.

12. Federal agencies and institutes for the following purposes, that is to say, for research, for professional or technical training, or for the promotion of special studies.

13. Thé Benares Hindu University and the Aligarh Muslim University.

14. The Survey of India, the Geological, Botanical and Zoological Surveys of India; Federal meteorological organisations.

15. Ancient and historical monuments, archaeological sites and remains.

16. Census.

17. Admission into, and emigration and expulsion from India, including in relation thereto the regulation of the movements in India of persons who are not British subjects domiciled in India, subjects of any Federated State, or British subjects domiciled in the United Kingdom; pilgrimages to places beyond India.

18. Port quarantine; seamen's and marine hospitals; and hospitals connected with port quarantine.

19. Import and export across customs frontiers as defined by the Federal Government.

20. Federal railways, the regulation of all railways other than minor railways in respect of safety, maximum and minimum rates and fares, station and service terminal charges, interchange of traffic and the responsibility of railway administrations as carriers of goods and passengers; the regulation of minor railways in respect of safety and the responsibility of the administrations of such railways as carriers of goods and passengers.

21. Maritime shipping and navigation, including shipping and navigation on tidal waters; Admiralty jurisdiction.

22. Major ports, that is to say, the declaration and delimitation of such ports, and the constitution and powers of Port Authorities therein.

23. Fishing and fisheries beyond territorial waters.

24. Aircraft and air navigation; the provision of aerodromes; regulation and organisation of air traffic and of aerodromes.

25. Lighthouses, including lightships, beacons and other provision for the safety of shipping and aircraft.

26. Carriage of passengers and goods by sea or by air.

27. Copyright, inventions, designs, trade-marks and merchandise marks

28. Cheques, bills of exchange, promissory notes and other like instruments.

29. Arms, firearms, ammunition.

30. Explosives

31. Opium, so far as regards cultivation and manufacture, or sale for export

32. Petroleum and other liquids and substances declared by Federal law to be dangerously inflammable, so far as regards possession, storage and transport

33. Corporations, that is to say, the incorporation, regulation and winding-up of trading corporations, including banking, insurance and financial corporations, but not including corporations owned or controlled by a Federated State and carrying on business only within that State or co-operative societies, and of corporations, whether trading or not, with objects not confined to one unit.

34. Development of industries, where development under Federal control is declared by Federal law to be expedient in the public interest.

35. Regulation of labour and safety in mines and oil-fields.

36. Regulation of mines and oilfields and mineral development to the extent to which such regulation and development under Federal control is declared by Federal law to be expedient in the public interest.

37. The law of insurance, except as respects insurance undertaken by a Federated State, and the regulation of the conduct of insurance business, except as respects business undertaken by a Federated State; Government insurance, except so far as undertaken by a Federated State, or, by virtue of any entry in the Provincial Legislative List or the Concurrent Legislative List, by a Province.

38. Banking, that is to say, the conduct of banking business by corporations other than corporations owned or controlled by a Federated State and carrying on business only within that State.

39. Extension of the powers and jurisdiction of members of a Police force belonging to any part of British India to any area in another Governor's Province or Chief Commissioner's Province, but not so as to enable the Police of one part to exercise powers and jurisdiction elsewhere without the consent of the Government of the Province or the Chief Commissioner, as the case may be, extension of the powers and jurisdiction of members of a Police force belonging to any unit to railway areas outside that unit.

40. Elections to the Federal Legislature, subject to the provisions of this Act and of any Order in Council made thereunder.

41. The salaries of the Federal Ministers, of the President and Vice-President of the Council of State and of the Speaker and Deputy Speaker of the Federal Assembly; the salaries, allowances and privileges of the members of the Federal Legislature; and, to such extent as is expressly authorised by Part II of this Act, the punishment of persons who refuse to give evidence or produce documents before Committees of the Legislature.

42. Offences against laws with respect to any of the matters in this list.

43. Inquiries and statistics for the purposes of any of the matters in this list.

44. Duties of customs, including export duties.
45. Duties of excise on tobacco and other goods manufactured or produced in India except—
 - (a) alcoholic liquors for human consumption;
 - (b) opium, Indian hemp and other narcotic drugs and narcotics; non-narcotic drugs;
 - (c) medicinal and toilet preparations containing alcohol, or any substance included in sub-paragraph (b) of this entry.
46. Corporation tax.
47. Salt.
48. State lotteries.
49. Naturalisation.
50. Migration within India from or into a Governor's Province or a Chief Commissioner's Province.
51. Establishment of standards of weight.
52. Ranchi European Mental Hospital.
53. Jurisdiction and powers of all courts, except the Federal Court, with respect to any of the matters in this list and, to such extent as is expressly authorised by Part IX of this Act,¹ the enlargement of the appellate jurisdiction of the Federal Court, and the conferring thereon of supplemental powers.
54. Taxes on income other than agricultural income.
55. Taxes on the capital value of the assets, exclusive of agricultural land, of individuals and companies; taxes on the capital of companies.
56. Duties in respect of succession to property other than agricultural land.
57. The rates of stamp duty in respect of bills of exchange, cheques, promissory notes, bills of lading, letters of credit, policies of insurance, proxies and receipts.
58. Terminal taxes on goods or passengers carried by railway or air; taxes on railway fares and freights.
59. Fees in respect of any of the matters in this list, but not including fees taken in any Court.

LIST II.

PROVINCIAL LEGISLATIVE LIST.

1. Public order (but not including the use of His Majesty's naval, military or air forces in aid of the civil power); the administration of justice; constitution and organisation of all courts, except the Federal Court, and fees taken therein; preventive detention for reasons connected with the maintenance of public order, persons subjected to such detention.

2. Jurisdiction and powers of all courts except the Federal Court, with respect to any of the matters in this list; procedure in Rent and Revenue Courts.

3. Police, including railway and village Police.

4. Prisons, reformatories, Borstal institutions and other institutions of a like nature, and persons detained therein; arrangements with other units for the use of prisons and other institutions

5. Public debt of the Province.

6. Provincial Public Services and Provincial Public Service Commissions.

7. Provincial pensions, that is to say, pensions payable by the Province or out of Provincial revenues.

8. Works, lands and buildings vested in or in the possession of His Majesty for the purposes of the Province.

9. Compulsory acquisition of land.

10. Libraries, museums and other similar institutions controlled or financed by the Province.

11. Elections to the Provincial Legislature, subject to the provisions of this Act and of any Order in Council made thereunder.

12. The salaries of the Provincial Ministers, of the Speaker and Deputy Speaker of the Legislative Assembly, and, if there is a Legislative Council, of the President and Deputy President thereof; the salaries, allowances and privileges of the members of the Provincial Legislature; and, to such extent as is expressly authorised by Part III of this Act¹, the punishment of persons who refuse to give evidence

¹ Sections 46-93.

or produce documents before Committees of the Provincial Legislature.

13. Local government, that is to say, the constitution and powers of municipal corporations, improvement trusts, district boards, mining settlement authorities and other local authorities for the purpose of local self-government or village administration.

14. Public health and sanitation; hospitals and dispensaries; registration of births and deaths.

15. Pilgrimages, other than pilgrimages to places beyond India.

16. Burials and burial grounds.

17. Education

18. Communications, that is to say, roads, bridges, ferries, and other means of communication not specified in List I; minor railways, subject to the provisions of List I with respect to such railways, municipal tramways, ropeways; inland waterways and traffic thereon subject to the provisions of List III with regard to such waterways; ports, subject to the provisions in List I with regard to major ports; vehicles other than mechanically propelled vehicles.

19. Water, that is to say, water supplies, irrigation and canals, drainage and embankments, water storage and water power.

20. Agriculture, including agricultural education and research, protection against pests and prevention of plant diseases; improvement of stock and prevention of animal diseases; veterinary training and practice, pounds and the prevention of cattle trespass.

21. Land, that is to say, rights in or over land, land tenures, including the relation of landlord and tenant, and the collection of rents; transfer, alienation and devolution of agricultural land; land improvement and agricultural loans, colonization; Courts of Wards; encumbered and attached estates; treasure trove.

22. Forests

23. Regulation of mines and oilfields and mineral development subject to the provisions of List I with respect to regulation and development under Federal control.

24. Fisheries.
25. Protection of wild birds and wild animals.
26. Gas and gasworks.
27. Trade and commerce within the Province; markets and fairs; money lending and money lenders.
28. Inns and innkeepers.
29. Production, supply and distribution of goods; development of industries, subject to the provisions in List I with respect to the development of certain industries under Federal control.
30. Adulteration of foodstuffs and other goods; weights and measures.
31. Intoxicating liquors and narcotic drugs, that is to say, the production, manufacture, possession, transport, purchase and sale of intoxicating liquors, opium and other narcotic drugs, but subject, as respects opium, to the provisions of List I and, as respects poisons and dangerous drugs, to the provisions of List III.
32. Relief of the poor, unemployment.
33. The incorporation, regulation, and winding-up of corporations other than corporations specified in List I; unincorporated trading, literary, scientific, religious and other societies and associations, co-operative societies.
34. Charities and charitable institutions, charitable and religious endowments.
35. Theatres, dramatic performances and cinemas, but not including the sanction of cinematograph films for exhibition.
36. Betting and gambling.
37. Offences against laws with respect of any of the matters in this list.
38. Inquiries and statistics for the purpose of any of the matters in this list.
39. Land revenue, including the assessment and collection of revenue, the maintenance of land records, survey for revenue purposes and records of rights, and alienation of revenue.
40. Duties of excise on the following goods manufactured or produced in the Province and countervailing duties at the same or lower rates on simi-

lar goods manufactured or produced elsewhere' in India—

- (a) alcoholic liquors for human consumption;
- (b) opium, Indian hemp and other narcotic drugs and narcotics; non-narcotic drugs;
- (c) medicinal and toilet preparations containing alcohol or any substance included in sub-paragraph (b) of this entry.

41. Taxes on agricultural income.

42. Taxes on lands and buildings, hearths and windows.

43. Duties in respect of succession to agricultural land.

44. Taxes on mineral rights, subject to any limitations imposed by any Act of the Federal Legislature relating to mineral development.

45. Capitation taxes.

46. Taxes on professions, trades, callings and employments.

47. Taxes on animals and boats.

48. Taxes on the sale of goods and on advertisements.

49. Cesses on the entry of goods into a local area for consumption, use or sale therein.

50. Taxes on luxuries, including taxes on entertainments, amusements, betting and gambling.

51. The rates of stamp duty in respect of documents other than those specified in the provisions of List I with regard to rates of stamp duty.

52. Dues on passengers and goods carried on inland waterways.

53. Tolls.

54. Fees in respect of any of the matters in this list, but not including fees taken in any Court.

LIST III.

CONCURRENT LEGISLATIVE LIST.

Part I

1. Criminal law, including all matters included in the Indian Penal Code at the date of the passing of this Act, but excluding offences against laws with

spect to any of the matters specified in List I or List II and excluding the use of His Majesty's naval, military and air forces in aid of the civil power.

2. Criminal Procedure, including all matters included in the Code of Criminal Procedure at the date of the passing of this Act.

3. Removal of prisoners and accused persons from one unit to another unit.

4. Civil Procedure, including the law of Limitation and all matters included in the Code of Civil procedure at the date of the passing of this Act; the recovery in a Governor's Province or a Chief Commissioner's Province of claims in respect of taxes and other public demands, including arrears of land revenue and sums recoverable as such, arising outside that Province.

5. Evidence and oaths; recognition of laws, public acts and records and judicial proceedings.

6. Marriage and divorce; infants and minors; adoption.

7. Wills, intestacy, and succession, save as regards agricultural land.

8. Transfer of property other than agricultural land; registration of deeds and documents.

9. Trusts and Trustees.

10. Contracts, including partnership, agency, contracts of carriage, and other special forms of contract, but not including contracts relating to agricultural land.

11. Arbitration.

12. Bankruptcy and insolvency; administrators-general and official trustees.

13. Stamp duties other than duties or fees collected by means of judicial stamps, but not including rates of stamp duty.

14. Actionable wrongs, save in so far as included in laws with respect to any of the matters specified in List I or List II.

15. Jurisdiction and powers of all courts, except the Federal Court, with respect to any of the matters in this list.

16. Legal, medical and other professions.

17. Newspapers, books and printing presses.
18. Lunacy and mental deficiency, including places for the reception or treatment of lunatics and mental deficient.
19. Poisons and dangerous drugs.
20. Mechanically propelled vehicles.
21. Boilers.
22. Prevention of cruelty to animals.
23. European vagrancy, criminal tribes.
24. Inquiries and statistics for the purpose of any of the matters in this Part of this List.
25. Fees in respect of any of the matters in this Part of this List, but not including fees taken in any Court.

Part II

26. Factories.
27. Welfare of labour, conditions of labour, provident funds, employers' liability and workmen's compensation, health insurance, including invalidity pensions, old age pensions.
28. Unemployment insurance.
29. Trade unions; industrial and labour disputes.
30. The prevention of the extension from one unit to another of infectious or contagious diseases or pests affecting men, animals or plants.
31. Electricity.
32. Shipping and navigation on inland waterways as regards mechanically propelled vessels, and the rule of the road on such waterways; carriage of passengers and goods on inland waterways.
33. The sanctioning of cinematograph films for exhibition.
34. Persons subjected to preventive detention under Federal authority.
35. Inquiries and statistics for the purpose of any of the matters in this Part of this List.
36. Fees in respect of any of the matters in this Part of this List, but not including fees taken in any Court.

46. INSTRUMENT OF INSTRUCTIONS TO THE PROVINCIAL GOVERNOR. (Under Act of 1935)

*B—Instrument of Instructions, Act of 1935,
of the 1935*

VII. Our Governor shall ensure that in his day-to-day administration of the Province, the Government shall maintain a policy of tolerance and co-operation with all religious and social classes, and shall not discriminate against any religious or social community, and shall not favour any religious or social community, and shall not discriminate against any religious or social community, and shall not favour any religious or social community.

General
Principles of
Governor

VIII. The Governor shall ensure that the Government shall not discriminate against any religious or social community, and shall not favour any religious or social community, and shall not discriminate against any religious or social community, and shall not favour any religious or social community, and shall not discriminate against any religious or social community, and shall not favour any religious or social community.

How
Ministers
are to be
appointed

IX. The Governor shall ensure that the Government shall not discriminate against any religious or social community, and shall not favour any religious or social community, and shall not discriminate against any religious or social community, and shall not favour any religious or social community, and shall not discriminate against any religious or social community, and shall not favour any religious or social community.

Relations
between
Governor
and
Ministers

ment seems requisite for the due discharge of the responsibilities and functions aforesaid. But he shall be studious so to exercise his powers as not to enable his Ministers to rely upon his special responsibilities in order to relieve themselves of responsibilities which are properly their own.

**Interpreta-
tion of
'Special
Responsibi-
lity'**

X. Our Governor shall interpret his special responsibility for the safeguarding of the legitimate interests of the minorities as requiring him to secure, in general, that those racial or religious communities for the members of which special representation is accorded in the Legislature, and those classes of the people committed to his charge who, whether on account of the smallness of their number or their lack of educational or material advantages or from any other cause, cannot as yet fully rely for their welfare upon joint political action, in the Legislature, shall not suffer, or have reasonable cause to fear, neglect or oppression. But he shall not regard as entitled to his protection any body of persons by reason only that they share a view on a particular question which has not found favour with the majority.

**Share of
different
communi-
ties in
Public
Services**

Further, Our Governor shall interpret the said special responsibility as requiring him to secure a due proportion of appointments in Our Services to the several communities, and so far as there may be in his Province at the date of issue of these Our Instructions an accepted policy in this regard, he shall be guided thereby, unless he is fully satisfied that modification of that policy is essential to the interests of the communities affected or of the welfare of the public.

**Protection
of Public
Services**

XI. In the discharge of his special responsibility for the securing to members of the public services of any rights provided for them by or under the said Act and the safeguarding of their legitimate interests Our Governor shall be careful to safeguard the members of Our Services not only in any rights provided for them by or under the said Act or any other law for the time being in force, but also against any action which, in his judgment, would be inequitable.

XII. The special responsibility of Our Governor for securing in the sphere of executive action any of the purposes which the provisions of Chapter III of Part V of the said Act are designed to secure in relation to legislation shall be construed by him as requiring him to differ from his Ministers if in his individual judgment their advice would have effects of the kind which it is the purpose of the said Chapter to prevent, even though the advice so tendered to him is not in conflict with any specific provision of the said Act.

**Chapter
III of Part
V of Act of
1935**

XIII. Our Governor shall construe his special responsibility for the protection of the rights of any Indian State as requiring him to see that no action shall be taken by his Ministers, and no Bill of the Provincial Legislature shall become law which would imperil the economic life of any State, or affect prejudicially any right of any State heretofore or hereafter recognised, whether derived from treaty, grant, usage, sufferance or otherwise, not being a right appertaining to a matter with respect to which, in virtue of the Ruler's Instrument of Accession, the Federal Legislature may make laws for his State and its subjects, and he shall refer to Our Governor General any questions which may arise as to the existence of any such right¹.

**Protection
of rights of
Indian
States**

* * * *

XV. In the framing of rules for the regulation of the business of the Provincial Government Our Governor shall ensure that, amongst other provisions for the effective discharge of that business, due provision is made that the Minister in charge of the Finance Department shall be consulted upon any proposal by any other Minister which affects the finances of the Province; and further that no reappropriation within a Grant shall be made by any Department otherwise than after consultation with the Finance Minister; and that in any case in which the

Finance

¹ The procedure for the determination of the right in case of a dispute rests with the Crown Representative for the conduct of relation with the Indian States.

Finance Minister does not concur in any such proposal the matter shall be brought for decision before the Council of Ministers

Irrigation

XVI Having regard to the powers conferred by the said Act upon Our Secretary of State to appoint persons to Our service if, in his opinion, circumstances arise which render it necessary for him so to do in order to secure efficiency in irrigation Our Governor shall make it his care to see that he is kept constantly supplied with information as to the conduct of irrigation in his Province in order that he may, if need be, place this information at the disposal of Our Governor General

C — Matters affecting the Legislature

XVIII Our Governor shall not assent in Our name to, but shall reserve for the consideration of Our Governor General any Bill of any of the classes herein specified, that is to say —

Bills to be reserved for Governor-General

(a) any Bill the provisions of which would repeal or be repugnant to provisions of any Act of Parliament extending to British India,

(b) any Bill which in his opinion would, if it became law, so derogate from the powers of the High Court as to endanger the position which that Court is by the said Act designed to fill,

(c) any Bill which would alter the character of the Permanent Settlement;

(d) any Bill regarding which he feels doubt whether it does, or does not, offend against the purposes of Chapter III of Part V of the said Act.

* * * *

Power to stay proceedings upon a Bill

XX It is Our will that the power vested by the said Act in Our Governor to stay proceedings upon a Bill in the Provincial Legislature in the discharge of his special responsibility for the prevention of grave menace to peace and tranquillity shall not be exercised unless, in his judgment, the public discussion of the Bill would itself endanger peace and tranquillity.

XXI. It is Our will and pleasure that the seats of the Legislative Council to be filled by the nomination of Our Governor shall be so apportioned as in general to redress, so far as may be, inequalities of representation which may have resulted from election, and in particular to secure representation for women and the Scheduled Castes in that Chamber

**Nomination
of members
of Legisla-
tive Council**

47. INDIAN NATIONAL CONGRESS AND REJECTION OF ACT OF 1935.

I. Resolution of the Congress, Lucknow Session, 1936.

Whereas the Government of India Act, 1935 which is based on the White Paper and Joint Parliamentary Report and which is in many respects even more onerous than the proposals contained in them, and which may represent the will of the nation, is designed to facilitate and perpetuate the domination and exploitation of the people of India and is imposed on the country to the accompaniment of widespread repression and the suppression of civil liberties, the Congress reiterates its rejection of the new constitution in its entirety

**New
constitution
rejected "in
entirety"**

The Congress, as representing the will of the Indian people for national freedom and a democratic State, declares that no constitution imposed by outside authority and no constitution which curtails the sovereignty of the people of India and does not recognise their right to shape and control fully their political and economic future can be accepted. In the opinion of the Congress such a constitution must be based on the independence of India as a nation and it can only be framed by a Constituent Assembly elected on adult franchise or a franchise which approximates to it as nearly as possible. The Congress therefore, reiterates and stresses the demand for a Constituent Assembly in the name of the Indian people and calls upon its representatives and members in Legislatures and outside to work for the fulfilment of this demand.

**Demand for
Constituent
Assembly**

II. Resolution of the All-India Congress Committee, Calcutta, October, 1937.

Condition
of office
acceptance

By a resolution dated the 18th March, 1937 passed by the All-India Congress Committee at Delhi, it was resolved that permission be given for Congressmen to accept office in Provinces where the Congress commanded a majority in the Legislature if the leader of the Congress Party was satisfied and could state publicly that the Governor would not use his special powers of interference or set aside the advice of Ministers in regard to their constitutional activities.

"It would
not be
easy for
Governors
to use their
special
powers."

Since the said resolution, statements and declarations¹ were made on this issue on behalf of the British Government. After examining those declarations and the situation created as a result of circumstances and events which occurred after the A. I. C. C. resolution of March last, the Working Committee was of opinion that it would not be easy for Governors to use their special powers.

Office
acceptance
approved

The Working Committee at Wardha at its meeting held in July, 1937 came to the conclusion and resolved that Congressmen be permitted to accept office wherever they were invited thereto.

* * * *

It is resolved that the action of the Working Committee in taking the said decision be ratified.

III. Resolution of the Congress, Haripura Session, 1938.

Act of 1935
rejected

The Congress has rejected the new constitution and declared that a constitution for India, which can be accepted by the people, must be based on independence and can only be framed by the people themselves by means of a Constituent Assembly, without interference by any foreign authority. Adhering to this policy of rejection the Congress has, how-

¹ See Document No. 48.

ever, permitted the formation in Provinces of Congress Ministries with a view to strengthen the nation in its struggle for independence. In regard to the proposed Federation no such considerations apply even provisionally or for a period, and the imposition of this Federation will do grave injury to India and tighten the bonds which hold her in subjection to imperialist domination. This scheme of Federation excludes from the sphere of responsibility vital functions of Government.

**Why
Ministries
formed**

The Congress is not opposed to the idea of Federation, but a real Federation must, even apart from the question of responsibility, consist of free units enjoying more or less the same measure of freedom and civil liberty, and representation by the democratic process of election. The Indian States participating in the Federation should approximate to the Provinces in the establishment of representative institutions and responsible government, civil liberties and method of election to the Federal Houses. Otherwise the Federation, as it is now contemplated, will, instead of building up Indian unity, encourage separatist tendencies and involve the States in internal and external conflicts.

**Criticism
of Federal
Scheme**

**Position of
States in
Federation**

The Congress therefore reiterates its condemnation of the proposed Federal Scheme and calls upon the Provincial and Local Congress Committees and people generally, as well as the Provincial Governments and Ministries, to prevent its inauguration. In the event of an attempt being made to impose it, despite the declared will of the people, such an attempt must be combated in every way, and the Provincial Governments and Ministries must refuse to co-operate with it

**Attempt to
impose
Federation
"must be
combated
in every
way".**

48. LORD LINLITHGOW ON RELATIONS OF GOVERNORS WITH MINISTERS, 1937.

(Statement, June 22, 1937).

[The full results of the Provincial elections were known in February, 1937. In Madras the Congress secured about 74 per cent. of the total seats in the Legislative Assembly and

56.5 per cent of the total seats in the Legislative Council. In Bombay the Congress secured 49 per cent of the total seats in the Assembly and 50 per cent of the total seats in the Council. In C.P. the Congress secured 62.5 per cent of the total seats in the Assembly. In U.P. the Congress secured 59 per cent of the total seats in the Assembly and 8 per cent of the total seats in the Council. In Bihar the Congress secured 65 per cent of the total seats in the Assembly and failed to secure any seat in the Council. In Orissa the Congress secured 50 per cent of the total seats in the Assembly. In Assam the Congress secured about 30 per cent of the total seats in the Assembly and failed to secure any seat in the Council. In the N.W.F.P. the Congress secured 38 per cent of the total seats in the Assembly. In Bengal, Sind and the Punjab the Congress secured about 22 per cent, 12 per cent and 10.5 per cent respectively of the total seats in the Assembly.

A decision on the question of acceptance of office could no longer be delayed. On March 18, 1937, the All India Congress Committee passed a resolution, reiterating the Congress policy of combating and ending the Act, but authorising "the acceptance of offices in Provinces where the Congress commands a majority in the Legislature, provided the Ministerships shall not be accepted unless the leader of the Congress party in the legislature is satisfied and is able to state publicly that the Governor will not use his special powers of interference or set aside the advice of Ministers in regard to their constitutional activities." In a statement issued on March 30, 1937, Mahatma Gandhi observed: "My desire was not to lay down any impossible condition. I felt that this object could not be secured unless there was a gentlemanly understanding between Governors and their Congress Ministers that they would not exercise their special powers of interference so long as Ministers acted within the Constitution. Have I not heard Sir Samuel Hoare and other Ministers saying in so many words that ordinarily Governors would not use their admittedly large powers of interference? I claim that the Congress formula asked for nothing more. It has been claimed on behalf of the British Government that the Act gives autonomy to the Provinces. If that is so, it is not Governors but Ministers who are during their period of office responsible for the wise administration of their Provinces."

Professor Coupland's interpretation of the Congress demand is as follows: "The Governors were to promise not to do what in certain circumstances they were required to do by the Act and Instructions which they had sworn to obey."¹ The Governors refused to give such a promise, and the Congress leaders declined to take office. Instead of governing the Congress-majority Provinces under Section 93 of the Act of

¹ *The Constitutional Problem in India, Part II, p. 17.*

1955, the Governors appointed "Interim" Ministers not supported by the Legislatures.

The controversy about the legality and desirability of the Congress demand went on for about four months and was included by Lord Linlithgow's statement of June 22. Professor Compland says, "In fact no constitutional ground had been tendered. Lord Linlithgow had not accepted Lord Keith's

doctrine that a conflict between a Governor and his Ministers should be resolved by an appeal to the electorate. He did his view that only a conflict on a major issue would justify an open breach imply that on other issues the 'safeguards' would not operate at all. On minor questions, as matters, it was not to be supposed that Ministers would act as a matter of deliberate policy to do what the Governor said, had been designed to prevent. Differences of opinion on such questions would probably therefore be due to misunderstandings and ought to be overcome by frank discussion." However, the Viceroy's statement satisfied the Congress, and on July 7, 1937, the Working Committee permitted Congressmen to accept office with the purpose of combating the new Act on the one hand and presenting a constructive programme on the other.¹

I have refrained hitherto from making any public statement of any sort on the constitutional issues which have been raised by the refusal of the party which commands a majority of the votes in the Legislatures to accept office in certain Provinces. My decision to do so was deliberate. The Governor-General, it is true, exercises under the Act a general control of the action taken by Provincial Governors in their discretion or in their individual judgment and he is himself correspondingly subject to the general control of the Secretary of State. But given the scheme, the intention, and the construction of the new constitution, matters such as those which have of late been the subject of discussion in all Provinces in which the majority party in the Legislatures has declined to accept office are eminently in the first place, matters for discussion between the leaders of that party in the Province concerned and the Governor of that Province.

Refusal of Congress to accept office

Relations between Secretary of State, Governor-General and Governors

Discussions between Governors and leaders of Congress Parliamentary parties

A point has now, however, been reached at which it will, I think, be of advantage that, for the benefit

**Official
statement
required on
question of
office accep-
tance raised
by Congress**

or the man in the street and the ordinary elector. I should myself take up the threads of this discussion in the light of the statements which have been made in Parliament by the Secretary of State, and in individual Provinces by the Governors, and that I should state comprehensively, in the most formal and public manner open to me, my attitude, which is equally the attitude of the Secretary of State and the Governor of every Province in India, on the constitutional issues which have been brought to the fore in connection with this question of office acceptance.

* * * * *

**Congress
demand for
assurances**

The interval which has passed has been of value as giving an opportunity to His Majesty's Government, to Parliament, and to individual Governors, to clarify the position beyond any shadow of doubt. It has been of value, in my judgment, also in terms of the experience of the practical working of the new constitution afforded since the 1st of April in every Province in India, whether the Ministries in power in a Province commanded a majority in the Legislatures or were themselves supported only by a minority in those bodies. Three months ago a great political party, which commanded in six Provinces a majority in the Legislature, felt that even with the support of the majority in the Legislature, it could not wisely accept office under the provisions of the Act unless it received certain specific assurances from Governors. Three months' experience of the operation of the constitution, short as I agree that that period is, has conclusively shown from the practical point of view that, any legal difficulties in regard to the grant of such assurances apart¹, those assurances are not essential to the smooth and harmonious working of the constitution. In every Province Ministers have been able to test by practical experience that the co-operation and the assistance of the Ser-

**Lesson
taught by
'Interim'
Ministries**

1 In a communique issued by the U. P. Government it was stated that, in view of the obligations imposed upon the Governor by the Act of 1935 and the Instrument of Instructions, it was legally not in his power to meet the Congress demand.

are at their disposal, and that they can in their dealings in day-by-day administration of the Province, and in their relations with the Governors of their provinces, rely on those Governors to place at their disposal in the fullest measure and with no shade of suggestion of prejudice or personal feeling that help, sympathy, co-operation and experience which the Governors of individual Provinces have promised. Those three months have shown equally, and beyond question, that the apprehensions which have been entertained—and I readily accept the sincerity of those apprehensions even if I see no foundation of fact for them—that Governors would seek occasions for interfering with the policy of their Ministers or for the gratuitous and uncalled for exercise of the Special Responsibilities imposed upon them by the Act to impede or challenge Ministers in the day-by-day administration of the Province, have no shadow of justification.

'Interim' Ministries received full co-operation from Governors and Services.

Governors will not make 'gratuities and uncalled for exercise of the Special Responsibilities.'

I have been intimately associated with the framing of the present constitution. I am familiar with the close concern shown by Parliament, whether in the Joint Select Committee or on the floor of both Houses, to devise a scheme which would confer real and substantial powers on popularly elected Ministers, and which would enable those Ministers to feel that they could with confidence frame and implement, with the co-operation of Governors and of the Services, a programme of legislation on broad lines for the benefit of the Province the government of which was in their hands. The Act, and the Instrument of Instructions which must be read with the Act, have been approved by Parliament. Taken together they represent the intention of Parliament and the instructions given by Parliament to Governors. Those documents make it clear beyond any possibility of question that, under Provincial Autonomy, in all matters falling within the Ministerial field, including the position of the Minorities, the Services, etc., the Governor will ordinarily be guided in the exercise of his powers by the advice of his Ministers, and that

Intention of Parliament to 'confer real and substantial powers on popularly elected Ministers'

Official interpretation of Act of 1935 and Instrument of Instructions

**Relations
between
Governor
and
Ministers**

**'Special
Responsibilities'**

**'Governor
cannot
intervene at
random in
administration.'**

**Experience
of 'Interim'
Ministries
shows that
friction will
not arise out
of 'Special
Responsibilities'.**

those Ministers will be responsible not to Parliament but to the Provincial Legislature. The only qualifications of this rule are in respect of certain specific and clearly defined matters. The most important of these are those known as the Special Responsibilities, and of those Special Responsibilities again the most important are the prevention of any grave menace to the peace or tranquillity of the Province, or any part of the Province, the safeguarding of legitimate interests of Minorities, and the securing to the Services and their dependants of any rights provided or preserved for them under the Act and the safeguarding of their legitimate interests. Of those Special Responsibilities none was lightly placed by Parliament, or inconsiderately, on the shoulder of the Governor. Every one of them represents the response of Parliament to the demands of substantial and legitimate interests. There is no vestige of foundation for the assertion which I have seen advanced that the Governor is entitled under the Act at his pleasure to intervene at random in the administration of the Province. Those Special Responsibilities are, as I have said, restricted in scope to the narrowest limits possible. Even so, limited as they are, a Governor will at all times be concerned to carry his Ministers with him, while in other respects in the field of their Ministerial responsibilities it is mandatory on a Governor to be guided by the advice of his Ministers even though for whatever reason he may not himself be wholly satisfied that that advice is in the circumstances necessarily and decisively the right advice. The extent to which in practice, given goodwill on both sides and a desire to operate the new constitution for the benefit of the Province as a whole, difficulty may be anticipated from the existence of these Special Responsibilities cannot be better exemplified than by the history of every Province in India during the past three months. I think I am right in saying that no occasion has arisen on which there has been any conflict or difficulty in this area.

I have made clear, I hope, the object at which Parliament is aiming in the Act, the fact that it transferred the executive authority in the Province in practice to Ministers, and that the extent to which a Governor, acting in his discretion or in his individual judgment, has vested in him certain responsibilities is restricted to the bare minimum judged to be essential. I have indicated further that in the Ministerial field there can be no interference by a Governor with Ministers, save in respect of matters with regard to which he is empowered to exercise an individual judgment.

Governor's special powers restricted to 'the bare minimum'

I now turn to the question of what is to happen if unfortunately a situation arises in which the Governor and his Ministers do not see eye to eye on a matter where he is required to exercise his individual judgment. Such an issue may arise over a matter of comparatively minor importance, or over a matter which is of major importance, but on which no responsible Ministry, however little it might itself agree with the decision taken by the Governor, would for a moment—or for more than a moment—contemplate resignation. I have already stated that Ministers have the duty of advising the Governor over the whole range of the executive government within the Ministerial field, including the area of the Special Responsibilities. For advice so given, whether on matters within or without the scope of the Special Responsibilities, Ministers are answerable to the Legislature. In all such matters in which he is not specifically required to exercise his individual judgment, it is mandatory upon the Governor to accept the advice of his Ministers. Within the limited area of his Special Responsibilities, a Governor is directly answerable to Parliament, whether he accepts or does not accept the advice of his Ministers. But if the Governor is unable to accept the advice of his Ministers, then the responsibility for his decision is his and his alone. In that event, Ministers bear no responsibility for the decision and are entitled—if they so desire—publicly to state that they take no responsibility for that parti-

Cases where Governor and Ministers differ

Ministers may publicly dissociate themselves from Governor's policy.

cular decision, or even that they have advised the Governor in an opposite sense.

Before
rejecting
Minister's
advice
Governor
will try to
secure his
concurrence

But every Governor will be concerned to have the support of his Ministry, or to know that he is not lightly at variance with his Ministry when he acts without their support, or against their advice, in the discharge of a Special Responsibility. He will, as I see it (and the view I now proceed to express is the view of every Governor in India and of the Secretary of State), in such circumstances in the first place put the Ministry or the Minister fully in possession of his mind. He will explain to him the reasons which in his judgment, make it essential for him to follow a particular course or to pass a particular order. He will listen with a mind open to conviction to the arguments on the other side which may be advanced to him. If he regards those arguments as valid, he will modify his proposal to such extent as may be appropriate. If he regards them, on the other hand, as invalid, he will do his utmost, before taking a final decision, to convince the Minister, or the Ministry, of the soundness of the reasons for which he is unable to accept his or their view. And if in these circumstances he still remains unable to influence their views in the direction he desires, he will take his decision and pass his order with the greatest personal regret that he should have been unable to secure the support of his Ministry, and before passing it he will have exhausted all methods of convincing his Ministry that that decision was the right one, given the obligation imposed upon him by the Act.

Ultimate
decision to
be made by
Governor

So much for the general basis on which, as I conceive it, a Governor will handle the situation which we have been discussing. But the Special Responsibilities, strictly defined as their ambit is, include in their compass matters and decisions the importance of which inevitably must vary greatly. I ask at once—is the same attitude to be adopted in every case, whether its importance is great or small? Is the Ministry to regard its position as affected in an equal degree by any and every decision of the Governor contrary to its advice, irrespective of the

magnitude or the intrinsic importance of that decision? In a case in which the Governor in the exercise of his Special Responsibilities, and after exhausting the method of approach to his Ministry which I have indicated, finds himself obliged to pass an order with which his Government did not agree, should the Government resign, or shall it carry on its work after indicating publicly, or privately, or publicly and privately, its attitude in the matter which has formed the subject of the order? Or shall the Governor be required to dismiss it?

Ministers should distinguish between important and unimportant cases in deciding their attitude towards Governor in case of his rejection of their advice.

These are all the points of practical importance they have attracted great attention lately in all political parties, for a pronouncement on such an issue must be of direct concern to every party in every Province in India. I judge in particular from the statements made by persons of eminence in contact with the majority party in six Provinces that the answer to them largely depends the final removal of any hesitations which may be entertained by that party as to the method in which the new constitution is to be operated and the extent to which Provincial Ministers can rely on fair treatment and a minimum of interference by a Governor in those matters which under the Act fall within their field. The answer to these questions is of importance to every political party in this country to which it falls to work the constitution, and to take advantage of the powers and responsibilities which have been transferred by the Government of India Act to popularly elected Ministers. It will be well, therefore, given the importance of this issue, that I should make plain beyond any question, and speaking with the fullest authority, my own position in regard to it, which is the position of the Secretary of State and of the Governors of the Provinces.

Misgivings of Congress

Let me say in the first place that it is essential in this matter to preserve a just sense of proportion. I welcome for this reason the helpful suggestion recently made by Mr. Gandhi that it is only when the issue between a Governor and his Ministers constitutes a serious disagreement that any question

Statement of Mahatma Gandhi

**Question of
Minister's
resignation
will arise
only in cases
of 'serious
disagree-
ment' with
Governor.**

**When
should
Ministry
resign or be
dismissed ?**

**Distinction
between
resignation
and
dismissal**

of the severing of their partnership need arise. "Serious disagreement" is a phrase which it is possible to define and to interpret in various ways. But the general sense is clear enough to anyone with any political or administrative experience. The matter involved must be of really major importance. It must, I would myself say, be of such a character that a Ministry would feel that their credit and their position were hopelessly compromised by a particular action taken against their advice by a Governor in the discharge of his responsibilities under the Act despite the fact that Ministers had no direct or indirect responsibility for that action, and that a Governor had taken the utmost pains to satisfy his Ministry that he had no choice in the discharge of his responsibilities but to take the action in question. I readily agree that where, on such an issue arising, and where the Governor and his Ministers have both approached the matter, as I am confident that they would, with open minds and with a full sense of responsibility—the Governor, in so far as his Special Responsibilities are concerned, to Parliament, the Ministry to the Provincial Legislature—no agreement could be reached, then the Ministry must either resign or be dismissed. As between resignation and dismissal, normal constitutional practice leans very heavily indeed to the side of resignation. Resignation is more consistent with the self-respect of a Ministry, and is an effective public indication of the attitude of Ministers towards the action of a Governor. Resignation equally is an act taken spontaneously by a Ministry. Dismissal, more unusual by far in constitutional practice, might seem to carry with it some suggestion of inferiority, a suggestion which we are concerned at any cost to eliminate from the new constitutional arrangements. I ought perhaps to add that the suggestion that the Governor should in certain circumstances demand the resignation of his Ministers is not the solution provided by the Act and so that it will not be possible for Governors to accept it. Both resignation and dismissal are possible, the former at the option of the Minis-

ness and the latter at the option of the Governors. But the Act does not contemplate that the Governor's option should be used to force the Ministers' option and thus to shift the responsibility from himself.

I have deliberately dealt with the extreme case of a conflict involving resignation or dismissal, for it is the extreme case on which attention has been rivetted. But the extreme case is in my judgment most unlikely in ordinary circumstances to arise, and it would be unwise of us to allow a contingency, by no means probable, given normal working and the friendly and understanding relations which we can without undue optimism anticipate between a Governor and his Ministers, to assume a dominating importance in our eyes. In the ordinary way such differences as may arise between a Governor and his Ministers will admit, with goodwill on both sides, of being resolved in the ordinary course of administration by agreement between the two parties, without any question of issues so major as resignation or dismissal coming to the fore. I have already indicated the method by which I anticipate the Governors will deal with a situation in which such a difference of opinion exists. I feel no doubt whatever myself that, on that basis, deadlocks need not be anticipated. In view of the anxiety of all Governors—to which I can myself testify—not merely not to provoke conflicts with their Ministers, to whatever party their Ministers may belong, but to leave nothing undone to avoid or to resolve such conflicts.

I have been the more concerned to set out in some detail the position as I see it, in that it is essential that those interests, or communities, or areas, to which the Act extends the assurance of Special Responsibilities, should not, for a moment, think, or have the least ground for thinking, that any question will arise of sacrificing their interests for political reasons. So far as the individual Governors are concerned, I can reassure them on that point with the utmost confidence and the fullest authority. So far as political parties go, experience in those

'Extreme case of conflict' between Governor and Ministers not anticipated

Compromise possible in ordinary cases

Those who are entitled to the benefit of 'Special Responsibilities' need not be alarmed.

**Congress
attitude to
Minorities**

Provinces which are at present governed by Ministries supported by a majority in the Legislature is decisively encouraging. As regards the remaining Provinces, the statements of responsible leaders of the majority party have emphasized how shortsighted any attack on those interests would be from the point of view of that party itself and how improbable it is. What I am concerned to make clear is that, without any threat to those interests, or any sacrifice of them, a Governor and his Ministers can, in my judgment, hope, within the provisions of the Act, to operate the constitution in a normal manner which the Act envisages, and to avoid, save in circumstances which I find it not easy to contemplate, fundamental differences of opinion such as to endanger the relation between the Governor and his Ministry in that very limited area in which certain special obligations and responsibilities are imposed upon a Governor.

Let me review what I have said. The position is as follows —

**Executive
authority to
be normally
exercised
by Governor
on the
advice of
Ministers**

The executive authority of a Province runs in the name of the Governor ; but in the Ministerial field the Governor, subject to the qualifications already mentioned, is bound to exercise that executive authority on the advice of his Ministers. There are certain strictly limited and clearly defined areas in which, while here as elsewhere primarily responsibility rests with Ministers, the Governor remains ultimately responsible to Parliament. Over the whole of the remainder of the field Ministers are solely responsible, and they are answerable only to the Provincial Legislature. In the discharge of the Governor's Special Responsibilities it is open to the Governor, and it is indeed incumbent upon him, to act otherwise than on the advice of his Ministers if he considers that the action they propose will prejudice Minorities or areas or other interests affected. The decision in such cases will rest with the Governor; and he will be responsible to Parliament for taking it. But the scope of such potential interference is strictly de-

**In certain
cases
ultimate
decision
will rest on
Governor.**

—and there is no foundation for any suggestion that a Governor is free, or is entitled, or would have the power, to interfere with the day-to-day administration of a Province outside the limited range of the responsibilities specially confided to him. Before taking a decision against the advice of his Ministers, even within that limited range a Governor will spare no pains to make clear to his Ministers the reasons which have weighed with him in thinking both that the decision is one which it is incumbent on him to take, and that it is the right one. He will put them in possession of his mind. He will listen to the arguments they address to him. He will reach his decision with full understanding of those arguments and with a mind open to conviction. In such circumstances, given the good will which we can I trust postulate on both sides, and for which I can on behalf of His Majesty's Government answer so far as Governors are concerned, conflicts need not in a normal situation be anticipated. On the matter of degree a convention which would require the automatic dismissal or resignation of a Ministry whenever there is any difference of opinion, however unimportant, would show a lack of proportion, and I need not now emphasize the objections to any such convention. For it goes without saying that cases of quite minor importance may arise within the area under discussion; and it goes without saying equally that government, and the position of Ministers, would be impossible, if on each such occasion a Governor were required by a binding convention to dismiss his Ministers, or the Ministers felt it incumbent on them to resign. The interruption to administration and the loss of credit to Ministers would be intolerable. All the more so since Ministers would feel compelled to resign on account of a decision for which they were not in any way responsible and on which they would be at liberty to indicate publicly that they differed from the Governor who had, in the discharge of his own responsibilities, chosen to take a particular course. It is not by rigid conventions of this nature, but by give and take, by the elasticity which is the

Governor is not free to interfere in day-to-day administration.

Governor will be very cautious about rejecting Ministers' advice.

Differences on cases of minor importance should not lead to resignation or dismissal of Ministers

Need for give and take

governing factor of any successful democratic constitution, that constitutional advance is shown by the experience of history to proceed.

**When can
Ministers
resign ?**

Where on the other hand a really major issue is involved and Ministers, even though they are not responsible for the final decision taken by a Governor, and can without any constitutional impropriety make that clear, feel that such action raised issues of such a character, and affected their position as a parliamentary party, in such a way, that they can no longer, without misunderstanding in the country, associate themselves with the Governor in the work of administration then it is open to Ministers to resign. Or, if they do not resign and the Governor feels that his partnership with them cannot with profit to the public continue, it is open to a Governor, and indeed incumbent on him, to dismiss them. But the object of Governors, and I feel confident the object of the Ministers, will at all times be to avoid such a state of things arising.

**When
should
Governor
dismiss
Ministers ?**

The mere fact that the Government of India Act covers contingencies such as the dismissal of Ministers, the breakdown of the constitution, or the like, is not for one moment to be taken as involving an assumption that the framers of the Act, those concerned with its administration, or anyone, indeed, who is concerned for the constitutional progress and the development of this great country, wishes to see those contingencies turned into realities. The design of Parliament, and the object of those of us who are servants of the Crown in India and to whom it falls to work the provisions of the Act, must be and is to ensure the utmost degree practicable of harmonious co-operation with the elected representatives of the people for the betterment and improvement of each individual Province, and of India as a whole; and to avoid in every way, consistent with the Special Responsibilities for Minorities and the like which the Act imposes, any such clash of opinion as would be calculated unnecessarily to break down the machine of government, or to result in a severance of that fruitful partnership

**Constitutional
provisions
for contingencies
should not
be taken as
normal
procedure.**

**Servants of
the Crown
want
'harmonious
co-operation'
with
popular
representatives.**

between the Governor and his Ministers which is the basis of the Act, and the ideal the achievement of which the Secretary of State, the Governor-General and the Provincial Governors are all equally concerned to secure.

Before I take leave of you I feel that you would wish me, setting aside all technicalities, to speak to you for a moment or two as one who has had a good deal of Parliamentary experience and some share in the shaping of the new constitution. Some of you, I know, hold, and hold strongly, that the plan of reform does not go sufficiently far in the direction of complete self-government. I do not question the sincerity with which that view is held. But I am certain that every responsible person in deciding his position on this vital matter, does so with a genuine anxiety in the best interests of India to take a balanced view, and to reach a right decision as to what may best be done, in the conditions of this time, to serve those interests. Let me at once assure you that in my best judgment, and given good will on all sides, this constitution will work and that in experience it will be found to work well. It stands now as the law of the land. It stands, too,—and despite all the criticism that has been levelled against it—as the only complete and homogeneous scheme of political reform now before the country. I am convinced that the shortest road to that fuller political life which many of you so greatly desire is to accept this constitution, and to work it for all it is worth. Of then nature politics are ever dynamic, and to imagine that their expression in terms of a written constitution can render them static would be utterly to disregard the lessons of history, and indeed, the dictates of common sense.

Again, it is my firm conviction that this constitution will be found to offer immense opportunities for beneficent public service. And in this connection, I may venture a word upon a matter very close to my heart. It is my conviction that in the full working and development of this constitution lies the best

The Act of 1935 will work well.

This constitution should be accepted and worked.

This constitution offers scope for public service.

hope for that general and lasting amelioration in the condition of the rural population and of the humble sections of society which all of us so ardently desire.

'Choose the way of constructive effort'.

Rejection of this constitution will 'inflict no little hurt upon the cause of progressive reform'.

The discussions and debates of the last two months have, I think, placed before you every argument and point of view that bear upon this issue. The choice, a choice fraught with so much of profound significance for the future of India, must shortly be made. I hope with all my heart that all, whether leaders or their followers, may find it their duty to choose the way of constructive effort. Whatever emerges, you may count upon me, in face even of bitter disappointment, to strive untiringly towards the full and final establishment in India of the principles of Parliamentary Government. But if what I should regard as a deplorable outcome should emerge from the present situation and if Parliamentary and responsible government should as a consequence be suspended in a number of Provinces, it might, however much we might all of us regret it, be beyond the power of any of us rapidly to reverse the circumstances that must then supervene. In that event, invaluable time will be lost, and I greatly fear, no little hurt inflicted upon the cause of progressive reform. But I do not believe that these sad things will come to pass, for I have faith in you and in the destiny of India. The way we tread may seem dark and sometimes difficult. The star that guides our course may seem sometimes to flicker and almost to fail. Yet faith and courage are mighty forces. Let us summon them to our aid in this difficult hour, and together move steadily forward towards the fulfilment of our hopes.

49. RESIGNATION OF TWO CONGRESS MINISTRIES, 1938.

[The Congress by its election manifesto was, among other things, pledged to the release of all political prisoners. Most of them were released in the different Congress Provinces. In U.P. and Bihar some prisoners convicted of violence remained in jail. Agitation for their release was going on in the country. In Bihar some political prisoners repatriated

from the Andamans went on hunger strike. In U.P., though there was no hunger strike, the release of political prisoners could not be long delayed if the Congress was not to be accused of breaking its election pledges. It was well known that the prisoners had given up their faith in terrorist methods and violence. The Chief Ministers of the two Provinces had been insisting on their release, but the Governors were not agreeable. The former were compelled to arrive at the conclusion that, as heads of the Cabinets and as men primarily responsible for law and order, it was undignified for them to carry on a prolonged and fruitless controversy with the Governors. A great principle was involved. The Congress had accepted office on the clear understanding that there would be no interference with the Ministers in their legitimate constitutional day-to-day work. As the Governors refused to yield, and as they were supported by the Governor-General, the two Ministries resigned on February 15, 1938. A few days later the Governors and the Chief Ministers arrived at 'agreed conclusions' and the Ministers resumed office.]

I Statement of Lord Linlithgow, February 22, 1938.

The history of the difficulties which have arisen in the United Provinces and Bihar in connection with the release of prisoners described as political prisoners is well-known. In both Provinces discussions regarding the release of prisoners in this class have, for some time past, been proceeding between Ministers and Governors, and Governors throughout made it clear that they were ready and willing to examine individual cases and would not stand in the way of release, unless where circumstances were clearly such as to involve responsibilities laid upon them by the Act.

Distinction between individual release and general release of political prisoners

Discussions regarding release after examination of individual cases were still proceeding, when on 14th February a demand was tendered by the Premiers of Bihar¹ and the United Provinces² for immediate general release of all prisoners classed as 'political' in those two Provinces. . . .

¹ Babu Sri Krishna Sinha.

² Pandit Govind Ballabh Pant.

**Why
Governor-
General
advised
Governors
to reject
Ministers'
advice**

.....having regard to the responsibilities which, under the Constitution, are placed upon the Governor-General, the Governors of both Provinces, after consulting their Ministers, referred for my instructions the advice which their Ministers had tendered.

Having regard to the circumstances described above¹; to the essential necessity of considering the reaction on adjoining Provinces of the release of these prisoners, and to the fact that acceptance of the principle that terrorist convicts should be indiscriminately released without regard to individual considerations would be highly dangerous and in view of the history of terrorism in the past, could not fail to give impetus to fresh terrorist organisation in Bengal, careful consideration left me with no choice but to conclude that issues involved were such that it was incumbent on me to issue an instruction² to those Governors under provisions of section 126 (5) of the Act³

* * * *

**Resignation
of Ministers**

The Governors, on receipt of my instructions, informed their Ministers that they could not accept their advice on this matter. The Ministers thereupon tendered their resignation⁴.

1 "The prisoners in question are persons convicted of violence, or of preparation for specific acts of violence, by normal criminal courts"

2 The order issued by the Governor-General to the Governors of Bihar and the U.P. was as follows :
despite the advice in the contrary sense of your Ministers, you should decline to agree to the proposed general release of your 'political' prisoners "

3 This Section runs as follows : "the Governor-General, acting in his discretion, may at any time issue orders to the Governor of a Province as to the manner in which the executive authority thereof is to be exercised for the purpose of preventing any grave menace to the peace or tranquillity of India or any part thereof."

4 The Bihar Ministry wrote in the letter of resignation dated February 15, 1938, "We feel that conditions in which power in discharging special responsibilities in respect of peace and order could be legitimately exercised, do not exist in the Province. Nor are they likely to arise after

The Governors concerned, and I, so far as I am concerned, have done our utmost over the last seven months to work in harmonious co-operation with the Congress Ministers of both these Provinces and all possible help has been lent them. There has been no foundation over that period for any suggestion that it is the policy, or desire, of the Governor-General or of the Governors to impede or interfere with legitimate activities of these Ministries, or to take any step the necessity for which was not imposed upon them by the terms of the Act. That is equally true to-day.

No interference with 'legitimate' activities of Ministers

Ministers are responsible for law and order. But they are so responsible under the Act subject to the responsibility of Governors to ensure the peace and tranquillity of their own Province, and the Governors are bound to have in mind the earliest

release of 25 political prisoners on which, on grounds of policy and principle, we have insisted. We are not prepared to agree that release of these prisoners would have affected peace and tranquillity anywhere outside Bihar either. In this view of the matter we cannot but regard action of His Excellency the Governor-General, in a matter which is the primary concern of the Provincial Government, as a grave breach of the letter and the spirit of the constitution.

Views of Bihar Ministry

The U.P. Ministry wrote in the letter of resignation dated February 15, 1938, "No Council of Ministers can discharge its functions satisfactorily if its considered opinion is disregarded arbitrarily in respect of momentous questions, strictly falling within their purview, by outside authority."

Views of U. P. Ministry

It is inconceivable that release of no more than 15 political prisoners can be a grave menace to peace and tranquillity of any Province in India. The decision of the Governor-General is attributed to extra-provincial affairs and it is significant that action has been taken under Section 126 and not under Sec. 54, which suggests that the Governor of the Province does not consider that there is any menace to peace and tranquillity inside the Province itself. We look upon this interference as an utter abuse, even of provisions of Section 126(5), and it brings vividly home to us the unsubstantial character of autonomy which Provinces are supposed to enjoy, when advice of Council of Ministers can be trampled upon by one entirely outside the Province, and having no direct contact with it, and not a live part in its affairs."

Responsibilities imposed by the Act must be discharged by Governors and Governor-General.

ponding responsibility that falls on the Governor-General for the peace and tranquillity of India or any part thereof. Neither a Governor nor the Governor-General will wish to see his responsibility attracted, but, as I made clear in my message of last June where that responsibility is in fact attracted, neither the Governor nor the Governor-General can shrink from discharging it.

II. Resolution of the Congress, Haripura Session, 1938.

Interference of Governors in U. P. and Bihar

The experience of office by Congress Ministers in the Provinces has shown that at least in two Provinces, the U. P. and Behar, there has in fact been interference in the day-to-day administration of Provincial affairs In the opinion of the Congress, release of prisoners is a matter coming essentially within the purview of day-to-day administration, which does not admit of protracted discussion with Governors. The function of the Governor is to guide and advise Ministers, and not to interfere with the free exercise of their judgment in the discharge of their day-to-day duty

Unjustified interference of Governor-General

In the opinion of the Congress, the interference of the Governor-General with the deliberate action of the respective Prime Ministers is not merely a violation of the assurance¹ but it is also a misapplication of Section 126 (5) of the Government of India Act. There was no question of grave menace to peace and tranquillity involved.

Congress unwilling to precipitate crisis

The Congress does not desire to precipitate a crisis which may involve non-violent non-co-operation and direct action consistent with the Congress policy of truth and non-violence. The Congress is, therefore, at present reluctant to instruct Ministers in other Provinces to send in their resignations by way of protest against the Governor-General's action

¹ See Document No. 48.

When the Congress approved of acceptance of office, with great reluctance and considerable hesitation, it had no misgivings about its own estimate of the real nature of the Government of India Act. The latest action of the Governor-General justifies that estimate and not only exposes the utter inadequacy of the Act to bring real liberty to the people, but also shows the intention of the British Government to use and interpret it not for the expansion of liberty, but for its restriction

**Real nature
of Act of
1935
revealed**

III. Statement of Mahatma Gandhi.

I have read the Governor-General's statement with the respect and attention it deserves . . . It reads like a special pleading unworthy of a personage possessing unheard of powers.

**"Special
pleading" of
Governor-
General**

The Governors' duty and right are to advise their Ministers on questions of broad policy and warn them of the danger in their exercise of certain powers but, having done so, to leave their Ministers free to exercise their unfettered judgment. If such were not the case, responsibility would become a perfectly meaningless term and the Ministers responsible to their electors would have as their share nothing but odium and disgrace if their responsibility had to be shared with the Governors in the daily administration of affairs by law entrusted to them.

**Responsi-
bility of
Ministers
cannot be
shared with
Governors.**

One thing I must say in connection with the exercise by His Excellency of his powers under Section 126 (5) . . . I have read the whole of it. It is entitled "control of Federation over the Provinces in certain cases". Unless the Sub-Sections have no connection with one another and are to be read independently of one another, my reading is that in the present case the exercise of powers under Sub-Section 5 of Section 126 is a manifest misapplication

**"Manifest
misapplica-
tion" of
Section
126(5)**

50. LORD LINLITHGOW ON PROVINCIAL AUTONOMY.

I. Speech,¹ March 15, 1937.

End of the
unitary
system

Duties of
Governor-
General
and
Governors

New
relations
between
the Centre
and the
Provinces

...The great provincial electorates have made their choice, and upon the first day of next month provincial autonomy becomes an accomplished fact. From that moment the unitary system of government which has for so long a period of time obtained in this country comes to an end, and the eleven Provinces of British India adventure forth upon their several ways It is at a time such as this that the representative of the Crown, be he the Governor-General or the Governor of a Province, must needs remind himself that it is his bounden duty to stand above party interests and party differences, and to keep steadily before his mind his obligations not only to those whose cause has triumphed, but also to those who have tasted the bitterness of defeat And again, I am bound at this time to remember the fundamental nature of the change that is about to take place as between the Centre and the Provinces. Indeed, it is of the essence of the system of government upon which we are embarking that it provides for each Province free play within the limits of domestic policy to develop in the manner best suited to the circumstances, political and economic, of those who dwell within its bounds. It is most necessary that those of us who approach this question from the viewpoint of the Central Government, whatever the sphere of our responsibility, should keep steadily before us the proper limits of our action towards the Provinces, and that we should respect scrupulously those limits from the moment that Provincial Autonomy becomes effective.

II. Speech,² December 19, 1938.

When we last met a year ago, Provincial Autonomy had been in operation for nine months. The experience of those nine months had left me confi-

¹ At a dinner given by the President, Council of State, Sir Maneckji Dadabhoi.

² At Annual Meeting of the Associated Chambers of Commerce, Calcutta.

dent that whatever difficulties lay ahead (and the possibility of difficulty and misunderstanding was as present then as it is to-day), the workability and the essential soundness of the scheme devised by Parliament had proved themselves; and that, whatever criticisms might be levelled on points of detail, the foundation was the right one and given understanding and good will, the scheme of Provincial Autonomy was sound and workable. I was confident too that the autonomous Provincial Governments, whatever party they represented, could in the working of Provincial Autonomy expect in the fullest measure from Governors, from the Services, and, in so far as he was concerned, from the Governor-General, friendly and ready co-operation.

Another year's experience of the working of Provincial Autonomy leaves . . . no room for doubt . . . on any of these points. The tributes which Ministers of all political parties have in recent months paid to the work of the great Services speak for themselves. I know from first hand how real is the importance which Ministers attach to the loyal and willing co-operation which they have received. I can speak equally from first hand of the friendly character of the relations between Governors—standing as the King's representatives, outside and above party—and their Ministers. As to the working of the special responsibilities, you will, I am sure, agree that the forecast which I gave in my message to India of June last year has been amply and fully realised. . . . on a broad view, the great experiment of Provincial Autonomy, the transfer of real powers to Ministers elected by an electorate five times the size of any electorate that had previously voted in India has proved a marked success.

'Workability' and 'essential soundness' of scheme of Provincial Autonomy

'Loyal and willing co-operation' between Services and Ministers

'Friendly relations between Governors and Ministers

'Provincial Autonomy' 'has proved a marked success'.

51. MR. JINNAH ON MUSLIM CLAIMS, 1937-1938.

I. Presidential Address, All-India Muslim League, Lucknow Session, October, 1937.

. . . . On the 12th April, 1936, the Muslim League at its session, the first time in its history,

**League
policy in
1936**

undertook the policy and programme of mass contact. The League considered the prevailing conditions and surveyed the situation. We had to face the forthcoming elections on the eve of the inauguration of the new Provincial constitution embodied in the Government of India Act, 1935, and had no alternative but to enter the field and contest the elections to the Provincial Legislatures. It was also felt that there was no alternative but to utilise the Provincial constitution for what it was worth, although it was far from being satisfactory. I may here reproduce the resolution that was passed on the 12th April, 1936 :—

**League
resolution
of April 12,
1936**

‘Whereas the Parliamentary system of government which is being introduced in this country with the inauguration of the new constitution presupposes the formation of parties with a well-defined policy and programme which facilitate the education of the electorate, and co-operation between groups with approximate aims and ideals and ensures the working of the constitution to the best advantage; and whereas in order to strengthen the solidarity of the Muslim community and to secure for the Muslims their proper and effective share in the Provincial Governments, it is essential that the Muslims should organise themselves as one party, with an advanced and progressive programme, it is hereby resolved that the All-India Muslim League do take steps to contest the approaching Provincial elections. . . .’

**Manage-
ment of
elections**

In pursuance of that decision, the Muslim League Central Parliamentary Board was established in June, 1936, and also in various Provinces Provincial Boards were established to give effect to the resolution and the instructions of the League . . .

**Result of
elections**

. . . . In each and every Province where League Parliamentary Board was established and the League Parties were constituted we carried away about 60 and 70 per cent. of the seats that were contested by the League candidates . . . The Muslim League stands for full national democratic self-government for India . . . There are some who talk of complete indepen-

**Ideal of the
League**

ence. But it is no use having complete independence on your lips and the Government of India Act, 1935, in your hands

The present leadership of the Congress, especially during the last ten years, has been responsible for alienating the Mussalmans of India: more and more by pursuing a policy which is exclusively Hindu, and since they have formed the Governments in six Provinces where they are in a majority they have by their words, deed and programme shown more and more that the Mussalmans cannot expect any justice or fair play at their hands. Wherever they are in a majority and wherever it suited them, they refused to co-operate with the Muslim League Parties and demanded unconditional surrender and signing of their pledges.

**Charges
against
Congress**

The demand was insistent. "Abjure your party and forswear your policy and programme and liquidate Muslim League";¹ but where they found that they had not a majority, like the North-West Frontier Province, their sacred principle of collective responsibility disappeared, and promptly the Congress Party was allowed in that Province to coalesce with any other group². Any individual Mussalman member who was willing to unconditionally surrender and sign their pledge was offered a job as a Minister and was passed off as a Mussalman Minister, although he did not command the confidence or the respect of an overwhelming majority of the Mussalman representatives in the Legislatures Hindi is to be the national language of all India, and *Bande Mataram* is to be the national song, and is to be forced upon all. The Congress flag is to be obeyed and revered by all and sundry. On the very threshold of what little power and responsibility is given, the majority community have clearly shown their hand that Hindustan is for the Hindus; only the Congress masquerades under the name of nationalism, whereas the

**Muslim
Ministers
in Congress
Provinces**

**Language,
national
song and
flag**

**'Hindustan
is for the
Hindus'**

¹ See Coupland, *The Constitutional Problem in India*, Part II, pp. 110-112.

² See Coupland, *The Constitutional Problem in India*, Part II, pp. 16, 121-123.

Hindu Mahasabha does not mince words. The result of the present Congress Party policy will be, I venture to say, class bitterness, communal war and strengthening of the imperialistic hold as a consequence

Governor-General and Governors have violated constitution by their failure to protect Muslim interests.

. . . . the responsibility of the British Government is no less in the disastrous consequences which may ensue. It has been clearly demonstrated that the Governor and the Governor-General who have been given the powers and special responsibility to safeguard and protect the minorities under the constitution . . . have failed to use them and have thereby been a party to the flagrant breach of the spirit of the constitution and the Instrument of Instructions in the matter of appointment of Muslim Ministers. On the contrary they have been a party to passing off men as Muslim Ministers by appointing them as such, although they know full well that they do not command the confidence of the Muslim representatives or the public outside. If, in a matter like this, the Governors have shown their utter helplessness and disregard for their sacred obligations which were assumed by the British Government for the protection of minorities, could they or would they be able to afford protection in hundred and one other matters which may not come up to the surface or be known in the day-to-day working of the Legislature and the administrative machinery ? The one wholesome lesson that I ask the Mussalmans to learn, before it is too late, is that the path before the Mussalmans is therefore plain. They must realise that the time has come when they should concentrate and devote their energies to self-organization and full development of their power to the exclusion of every other consideration

Lesson for Muslims

No settlement with Hindus possible

No settlement with the majority is possible, as no Hindu leader speaking with any authority shows any concern or genuine desire for it. Honourable settlement can only be achieved between equals, and unless the two parties learn to respect and fear each other, there is no solid ground for any settlement It does not require political wisdom to realise

that all safeguards and settlements would be a scrap of paper, unless they are backed up by power

The Congress High Command speaks in different voices. One opinion is that there is no such thing as Hindu-Muslim question and there is no such thing as Minorities question in the country. The other high opinion is that if a few crumbs are thrown to the Mussalmans in their present disorganised and helpless state, you can manage them. They are sadly mistaken if they think that the Mussalmans can be imposed upon. The third opinion is that there is no light to be seen through the impenetrable darkness; but as the Congress goes on acquiring strength and power, so the past promises of the blank cheques remain unfilled and unsigned

"The Congress High Command speaks in different voices."

. . . . The Congress with all its boasts has done nothing in the past for the Mussalmans. It has failed to inspire confidence and to create a sense of security amongst the Mussalmans and other Minorities. The Congress attempt under the guise of establishing mass contact with the Mussalmans is calculated to divide and weaken and break the Mussalmans, and is an effort to detach them from their accredited leaders. It is a dangerous move, and it cannot mislead any one All the talk of hunger and poverty is intended to lead the people towards socialistic and communistic ideas for which India is far from prepared. The Muslim League in the present conditions considers the policy of direct action as suicidal and futile. Two such attempts have hitherto failed and have entailed untold misery and suffering to the people

Congress "has done nothing" for Muslims.

Criticism of Congress mass contact programme

Failure of Civil Disobedience movements

To ask by a resolution the Governor-General to convey to the Secretary of State a request to call a Constituent Assembly on the basis of adult franchise is the height of all ignorance. It shows lack of any sense of proportion. A Constituent Assembly can only be called by a sovereign authority and from the seat of power Who is to constitute the electorates on the basis of adult franchise, and how many

Criticism of Congress scheme of Constituent Assembly

representatives will be chosen by these electorates constituted on the basis of adult franchise, and what will happen to the Minorities in such constituencies, and what will the electorates understand, and how will they make their choice of this special body of men with final authority and power to frame the constitution of this great sub-continent?

British Government will not call a Constituent Assembly.

Taking the country as a whole, the Congress is still far from occupying the seat of authority, and it is a travesty of realities to think of British Government calling a Constituent Assembly and the ability of the Congress to do so is pure moonshine To ask the foreign Government who is the ruling and sovereign authority in this country to convene such a body before even the communal problem has been solved and before all important communities of India have accepted the leadership of the Congress is like putting the cart before the horse, and to forget that one-third of Indian India stands on a very special footing constituting the Indian States and Ruling Princes.

II. Presidential Address, All-India Muslim League, Patna Session, December, 1938.

Congress attempt to establish Hindu Raj has been fully exposed.

. . . . One thing has been demonstrated beyond doubt, namely, that the Congress High Command wanted the Mussalmans to be a mere under-study of the Congress, mere foot-pages of the Congress leaders, to be used, governed and brought under the heels when they had served the purpose of the Congress. The Congress leaders wanted them to submit unconditionally to the Hindu Raj. That game has now been fully exposed

Congress Fascism

The Congress has now . . . killed every hope of Hindu-Muslim settlement in the right royal fashion of Fascism. . . . The Congress High Command make the preposterous claim that they are entitled to speak on behalf of the whole of India, that they alone are capable of delivering goods. Others are asked to accept the gift as from a mighty sovereign. The Congress High Command declare that they will redress the grievances of the Muslims, and they expect

'Preposterous claim' of Congress

the Muslims to accept the declaration . . . We Mus-
 lims want no gifts. The Muslims want no conces-
 sions. We Muslims of India have made up our mind
 to have our fullest rights, but we shall have them
 as rights, not as gifts or concessions.

Muslims
 want rights,
 not conces-
 sions.

. . . . the Congress leaders may cry as much
 as they like that Congress is a national body. But I
 say it is not true. The Congress is nothing but a
 Hindu body. . . . The presence of the few Muslims—
 the few misled and misguided ones and the few who
 are there with ulterior motives—does not, cannot
 make it a national body

Congress is
 not a nation-
 al body.

Congress
 Muslims

. . . . Intoxicated with power gained under the
 new constitution, with the majority in six or seven
 provinces, the Congress game has been exposed a
 little too soon. What did the Congress do when it
 got the power? With all its pretensions of national-
 ism, it straightaway started with *Bande Mataram*.
 It is admitted that *Bande Mataram* is not the national
 song, yet it is sung as such and thrust upon others
 It is idolatrous and a hymn of hate against
 Muslims.

Charges
 against
 Congress :

(1) *Bande
 Mataram*

Take the case of the Congress flag. Admittedly it
 is not the national flag of India It does not
 matter if the Muslims object to it, the Congress flag
 must be paraded as the national flag of India and
 thrust upon the Muslims.

(2) Congress
 flag

Take next the case of Hindi-Hindustani Is
 there any doubt now in the mind of any one that the
 whole scheme of Hindi-Hindustani is intended to
 stifle and suppress Urdu ?

(3) Hindi

Take next the Wardha scheme of education
 Who is the author of the scheme? Mr. Gandhi
 it is Mr. Gandhi who is destroying the ideal
 with which the Congress was started. He is the one
 man responsible for turning the Congress into an ins-
 trument for the revival of Hinduism

(4) Wardha
 scheme of
 education

To-day Hindu mentality, Hindu outlook, is being carefully nurtured and Muslims are being forced to accept Hindu ideals in their daily life. . . .

* * * * *

The next question that you will have to consider is that of the Federation. Let the Congress continue to say that they will never accept the Federation . . The Congress will tumble into it just as it tumbled into the Provincial part of the constitution . . .

* * * * *

**Congress
"game"
regarding
Federation**

The Congress game with regard to Federation is very clear. If the Congress can gain the control over the Federal machinery, then, by means of direct and indirect powers vested in the Federal Government, the Congress would be able to reduce to non-entity the Government of the Hon'ble Mr. Fazl-ul-Huq in Bengal and the Hon'ble Sir Sikandar Hyat Khan in the Punjab. Soon in the end the Congress will have seven Provinces where they enjoy overwhelming numerical majority as a gift of God, and the other four Provinces where Muslims dominate will be the feudatories of the Congress High Command.

**Congress
plan to
dominate
Muslim-
majority
Provinces**

If I am right in judgment, that is the objective of the Congress. Therefore, I say the Congress opposition to the Federation is not honest . . .

52. INDIAN NATIONAL CONGRESS AND THE WAR.

I. Resolution of the Working Committee, September 14, 1939¹.

**Congress
disapproval
of Govern-
ment policy
towards
European
War**

The Working Committee have given their earnest consideration to the grave crisis that has developed owing to the declaration of war in Europe. The principles which should guide the nation in the event of a war have been repeatedly laid down by the Congress and only a month ago the Committee reiterated them and expressed their displeasure at the flouting of Indian opinion by the British Government in India. As a first step to dissociate themselves from this

¹ See Sitaramayya, *History of the Indian National Congress*, Vol. II, pp. 129-135.

policy of the British Government the Committee called upon the Congress members of the Central Legislative Assembly to refrain from attending the next session. Since then the British Government have declared India as a belligerent country, promulgated Ordinances, passed the Government of India Act Amending Bill and taken other far-reaching measures which affect the Indian people vitally and circumscribe and limit the powers and activities of the Provincial Governments.

The Congress has repeatedly declared its entire disapproval of the ideology and practice of Fascism and Nazism and their glorification of war and violence and the suppression of the human spirit. It has condemned the aggression in which they have repeatedly indulged and their sweeping away of well-established principles and recognised standards of civilised behaviour. It has seen in Fascism and Nazism the intensification of the principle of imperialism against which the Indian people have struggled for many years. The Working Committee must, therefore, unhesitatingly condemn the latest aggression of the Nazi Government in Germany against Poland and sympathise with those who resist it.

**Congress
disapproval
of Fascism
and Nazism**

The Congress has further laid down that the issue of war and peace for India must be decided by the Indian people and no outside authority can impose this decision upon them, nor can the Indian people permit their resources to be exploited for Imperialist ends. Any imposed decision, or attempt to use India's resources for purposes not approved by them, will necessarily have to be opposed by them. If co-operation is desired in a worthy cause, this cannot be obtained by compulsion and imposition, and the Committee cannot agree to the carrying out by the Indian people of orders issued by external authority. Co-operation must be between equals by mutual consent for a cause which both consider to be worthy. The people of India have in the recent past faced great risks and willingly made great sacrifices to secure their own freedom. But India cannot asso-

**'Issue of
war and
peace for
India must
be decided
by the
Indian
people'.**

ciate herself in a war said to be for democratic freedom when that very freedom is denied to her and such limited freedom as she possesses taken away from her.

If the war is to defend the 'status quo' of imperialist possessions, colonies, vested interests and privileges, then India can have nothing to do with it. If, however, the issue is democracy and a world order based on democracy, then India is intensely interested in it. The Committee are convinced that the interests of Indian democracy do not conflict with the interests of British democracy or of world democracy. But there is an inherent and ineradicable conflict between democracy for India or elsewhere and Imperialism and Fascism. If Great Britain fights for the maintenance and extension of democracy, then she must necessarily end imperialism in her own possessions and establish full democracy in India, and the Indian people must have the right of self-determination by framing their own constitution through a Constituent Assembly without external interference, and must guide their own policy. A free democratic India will gladly associate herself with other free nations for mutual defence against aggression and for economic co-operation. She will work for the establishment of a real world order based on freedom and democracy, utilising the world's knowledge and resources for the progress and advancement of humanity.

'Free democratic India' prepared to co-operate with other free nations

European War likely to refashion the world

The crisis that has overtaken Europe is not of Europe only but of humanity and will not pass like crises or wars leaving the essential structure of the present day world intact. It is likely to refashion the world for good or evil politically, socially and economically. This crisis is the inevitable consequence of the social and political conflicts and contradictions which have grown alarmingly since the last Great War and it will not be finally resolved till those conflicts and contradictions are removed and a new equilibrium established. The equilibrium can

only be based on ending of the domination and exploitation of one country by another and on a reorganisation of economic relations on a juster basis for the common good of all. India is the crux of the problem and no refashioning of the world can succeed which ignores this vital problem. With her vast resources she must play an important part in any scheme of world re-organisation. But she can only do so as a free nation whose energies have been released to work for this great end. Freedom to-day is indivisible and every attempt to retain imperialist domination in any part of the world will lead inevitably to fresh disaster.

Refashioning of world cannot exclude India.

The Working Committee have noted that many Rulers of Indian States have offered their services and resources and expressed their desire to support the cause of democracy in Europe. If they must make their professions in favour of democracy abroad, the Committee would suggest that their first concern should be the introduction of democracy in their own States in which to-day undiluted autocracy reigns supreme. The British Government in India is more responsible for this autocracy than even the Rulers themselves This policy is the very negation of democracy and of the new world order for which Great Britain claims to be fighting in Europe.

Rulers of Indian States co-operating with British war efforts should introduce democracy in their own territories.

As the Working Committee view past events in Europe, Africa and Asia, and more particularly past and present occurrences in India, they fail to find any attempt to advance the cause of democracy or self-determination or any evidence that the present war declarations of the British Government are being, or are going to be, acted upon. The true measure of democracy is the ending of imperialism and Fascism alike and the aggression that has accompanied them in the past and the present. Only on that basis can a new order be built up. In the struggle for that new world order the Committee are eager and desirous to help in every way. But the Committee cannot associate themselves or offer any co-operation in a war which is conducted on imperialistic lines and which

Congress cannot co-operate with imperialist war.

is meant to consolidate imperialism in India and elsewhere.

British Government invited to declare war aims

In view, however, of the gravity of the occasion and the fact that the pace of events during the last few days has often been swifter than the working of men's minds, the Committee desire to take no final decision at this stage so as to allow for the full elucidation of the issues at stake, the real objectives aimed at and the position of India in the present and in the future. But the decision cannot long be delayed as India is being committed from day-to-day to a policy to which she is not a party and of which she disapproves.

Will India be treated as a free nation ?

The Working Committee, therefore, invite the British Government to declare in unequivocal terms what their war aims are in regard to democracy and imperialism and the new order that is envisaged, in particular, how these aims are going to apply to India and to be given effect to in the present. Do they include treatment of India as a free nation whose policy will be guided in accordance with the wishes of her people? A clear declaration about the future, pledging the Government to the ending of imperialism and Fascism alike, will be welcomed by the people of all countries, but it is far more important to give immediate effect to it to the largest possible extent, for only this will convince the people that the declaration is meant to be honoured. The real test of any declaration is its application in the present, for it is the present that will govern action to-day and give shape to the future.

Sincerity of British declaration to be tested by its application to present issues

Increasing horrors of war in different parts of the world

War has broken out in Europe and the prospect is terrible to contemplate. But war has been taking its heavy toll of human life during the past year in Abyssinia, Spain and China. Innumerable innocent men, women and children have been bombed to death from the air in open cities. Coldblooded massacres, tortures and utmost humiliation have followed each other in quick succession during these years of horror. That horror grows and violence and the threat of violence shadow the world, and unless checked and

ended, will destroy the precious inheritance of past ages. That horror has to be checked in Europe and China but it will not end till its root causes, Fascism and Imperialism, are removed. To that end the Working Committee are prepared to give their co-operation. But it will be an infinite tragedy if even this terrible war is carried on in the spirit of imperialism and for the purpose of retaining this structure which is itself the cause of war and human degradation.

War against
Fascism
should not
be carried
on in the
spirit of
imperialism.

The Working Committee wish to declare that the Indian people have no quarrel with the German people or the Japanese people or any other people, but they have a deep-rooted quarrel with the systems which deny freedom and are based on violence and aggression. They do not look forward to a victory of one people over another or to a dictated peace but to a victory of real democracy for all the people of all the countries and a world freed from the nightmare of violence and imperialist aggression.

India's
quarrel is
with
Fascism,
not with
Germans or
Japanese.

The Committee earnestly appeal to the Indian people to end all internal conflict and controversy and in the grave hour of peril to keep in readiness and hold together as a united nation, calm of purpose and determined to achieve the freedom of India within the larger freedom of the world.

Appeal to
Indian
people

II. Resolution of the Working Committee, October 22, 1939.

The Working Committee are of opinion that the Viceregal statement¹ in answer to the Committee's invitation for a clear declaration of Britain's war aims, particularly in their application to India, is wholly unsatisfactory and calculated to rouse resentment among all those who are anxious to gain, and are intent upon gaining, India's independence. This invitation was made not only on behalf of the people of India, but for millions of people all over the world, who were weary of war and violence, and Fascist and Imperialist systems which exploited nations and

Viceroy's
Statement
unsatis-
factory

¹ See Document No. 54.

**Congress
wants
freedom
for all,
including
minorities.**

peoples and were ultimately the causes of war, and who yearned for a new order of peace and freedom. The Viceregal statement is an unequivocal reiteration of the old imperialistic policy. The Committee regard the mention of the differences among several parties as a screen to hide the true intention of Great Britain. What the Committee had asked for was a declaration of war aims as a test of Britain's *bona fides* regarding India, irrespective of the attitude of opposing parties and groups. The Congress has always stood for the amplest guarantee of the rights of minorities. The freedom the Congress claimed was not for the Congress or any particular group or community, but for the nation and for all communities in India that go to build that nation. The only way to establish this freedom and to ascertain the will of the nation as a whole is through a democratic process which gives full opportunity to all. The Committee must, therefore, regard the Viceroy's statement as in every way unfortunate. In the circumstances, the Committee cannot possibly give any support to Great Britain, for it would amount to an endorsement of the imperialist policy which the Congress has always sought to end. As a first step in this direction the Committee call upon the Congress Ministries to tender their resignations.

**Call for
preparation
for
resistance**

The Committee earnestly appeal to the nation to end all internal controversies in this hour of great crisis and to act unitedly in the cause of India's freedom. The Committee call upon all Congress Committees and Congressmen generally to be prepared for all developments and eventualities, and to show restraint of word and deed so that nothing may be said or done which is not in keeping with India's honour or the principles for which the Congress stands. The Committee warn Congressmen against any hasty action in the shape of civil disobedience, political strikes and the like. The Committee will watch the situation and the activities of the British Government in India, and will not hesitate to guide the country to take further steps whenever the

necessity for this arises. The Committee desire to impress upon all Congressmen that a programme of resistance, commensurate with the magnitude of the issue before the country, requires perfect discipline within Congress ranks and the consolidation of the Congress organisation.

The Working Committee realise that the non-violent resistance offered by the Congress in the past is sometimes been mixed with violence. The Committee desire to impress upon all Congressmen that any resistance that may have to be offered must be free of all violence, and to remind them of the pledges taken to this effect as early as 1921 during the Congress session at Ahmedabad and repeated on many subsequent occasions.

**Insistence
on non-
violence**

III. Instructions to Ministries and Legislative Parties.

[The Parliamentary Sub-Committee with the approval of the Working Committee issued the following instructions for the guidance of Ministries and Congress parties in the Congress provinces.]

The resolution of the Working Committee calls upon Congress Provincial Governments to tender their resignation. These resignations should be given after the Assembly meetings which have been convened for the purpose of discussing such urgent business as may be pending but it is expected that resignations will be tendered by October 31, 1939.

**Resignation
of Congress
Ministries**

The Central Provinces and Orissa Assemblies have been convened to meet at the beginning of November and the Provincial Governments in these provinces will remain in office till after this meeting.

Speakers and Deputy Speakers and members of the Assemblies, Presidents and members of the Councils are expected to retain their offices and seats. Ministers and Parliamentary Secretaries are the only persons who are at present expected to resign.

With regard to the resolution to be moved in the Assemblies on war aims, suitable amendments should be made in view of the new developments.

IV. Resolution on war crisis in Provincial Assemblies.

[The following resolution was moved by Premiers in the Provincial Assemblies of Madras, Central Provinces, Bihar, U.P., Bombay, Orissa and North-West Frontier Province. It was passed by large majorities in the seven provinces. In U.P. and C.P. Assemblies it was passed with slight amendments which were accepted by the Congress party.]

**Protest
against
dragging
India
into war**

This Assembly regrets that the British Government have made India a participant in the war between Great Britain and Germany without the consent of the people of India and have further in complete disregard of Indian opinion passed laws and adopted measures curtailing the powers and activities of the Provincial Governments.

**National
demand**

This Assembly recommends to the Government to convey to the Government of India and through them to the British Government that in consonance with the avowed aims of the present war, it is essential in order to secure the co-operation of the Indian people that the principle of democracy with effective safeguards for the Muslims and other minorities be applied to India and her policy be guided by her people; and that India should be regarded as an independent nation entitled to frame her own constitution and further that suitable action should be taken in so far as it is possible in the immediate present to give effect to that principle in regard to present governance of India.

This Assembly regrets that the situation in India has not been rightly understood by His Majesty's Government when authorising the statement that has been made on their behalf in regard to India, and in view of this failure of the British Government to meet India's demand this Assembly is of opinion that the Government cannot associate itself with British policy.

V. Resolution of the Working Committee, Allahabad, November 23, 1939.

The Working Committee have noted with pleasure the response of the country to the policy enun-

ated by them in regard to the war crisis in Europe and its repercussions in India. This policy, based on numerous declarations of the Congress, was laid down in the statement issued by the Committee on September 14, 1939, and subsequent events have amply justified its wisdom and expediency. The course of the war and the policy pursued by the British and French Governments, and, in particular, the declarations made on behalf of the British Government in regard to India, seem to demonstrate that the present war, like the World War of 1914-1918, is being carried on for imperialist ends, and British imperialism is to remain entrenched in India. With such a war and with this policy the Congress cannot associate itself, and it cannot countenance the exploitation of India's resources to this end.

**War for
imperialist
ends**

The Working Committee's unequivocal demand was for a declaration of war aims in regard to democracy and imperialism and in particular how these aims were going to be applied to India. These aims could only be considered worthy if they included the elimination of imperialism and the treatment of India as an independent nation whose policy would be guided in accordance with the wishes of her people. The answer to this demand has been entirely unsatisfactory and an attempt has been made on behalf of the British Government to create misunderstandings and to befog the main and moral issue. In justification of this refusal to make a declaration in terms of the Working Committee's resolution, communal pleas have been advanced and the rights of minorities and of the Princes pleaded as a barrier to India's freedom. The Committee wish to declare with all emphasis that no communal considerations arise in meeting the demand of the Congress, and the minorities, whatever their other differences might be, do not oppose India's right to freedom and independence. The Princes are represented by, and are the emblems of, the Paramount Power in India. In the end it will be the people of the Indian States who will determine what part they will take in a free India, though the British Government has consistently

**Barriers
to India's
freedom**

**Reply of
Congress**

ignored their wishes in a matter which vitally affects them. In any event the wishes of those who may oppose India's independence are, and must be irrelevant to the declaration of the British Government's intentions. The Committee can only interpret this attempt to avoid a statement of war aims and Indian freedom, by taking shelter under irrelevant issues, as a desire to maintain imperialist domination in India in alliance with the reactionary elements in the country.

**No spirit of
bargaining**

The Congress has looked upon the war crisis and the problems it raises as essentially a moral issue, and has not sought to profit by it in any spirit of bargaining. The moral and dominant issue of war aims and India's freedom has to be settled satisfactorily before any other subsidiary question can be considered. In no event can the Congress accept the responsibility of government, even in the transitional period, without real power being given to popular representatives. The Working Committee, therefore, approve of and endorse the reply dated November 4, 1939, sent by the Congress President to the Viceroy.

**Demand for
Constituent
Assembly**

The Committee wish to declare again that the recognition of India's independence and of the right of her people to frame their constitution through a Constituent Assembly, is essential in order to remove the taint of imperialism from Britain's policy and to enable the Congress to consider further co-operation. They hold that a Constituent Assembly is the only democratic method of determining the constitution of a free country, and no one who believes in democracy and freedom can possibly take exception to it. The Working Committee believe too that the Constituent Assembly alone is the adequate instrument for solving the communal and other difficulties. This, however, does not mean that the Working Committee will relax their efforts for arriving at a solution of the communal problem. This Assembly can frame a constitution in which the rights of accepted minorities would be protected to their satisfaction, and in the event of some matters relating to minority rights not being mutually agreed to, they can be referred to

arbitration. The Constituent Assembly should be elected on the basis of adult suffrage, existing separate electorates being retained for such minorities as desire them. The number of members in the Assembly should reflect their numerical strength.

The declarations made on behalf of the British Government, being inadequate, have compelled the Congress to dissociate itself from British policy and war effort, and as a first step in non-co-operation, to bring about the resignation of all Congress Governments in the Provinces. That policy of non-co-operation continues and must continue unless the British Government revises its policy and accepts the Congress contention. The Working Committee would, however, remind Congressmen that it is inherent in every form of Satyagraha that no effort is spared to achieve an honourable settlement with the opponent. While a Satyagrahi is ever ready for a non-violent fight, if it has to come, he never relaxes his effort for peace and always works for its attainment. The Working Committee will, therefore, continue to explore the means of arriving at an honourable settlement, even though the British Government has banged the door in the face of the Congress. The Committee must, however, resist by the non-violent methods of the Congress all attempts to coerce the people of India along paths which are not of their choice and everything that is against the dignity and freedom of India.

Policy of
non-co-
operation

Wanted
honourable
settlement

53. THE MUSLIM LEAGUE ON THE WAR.

(Resolution, September 18, 1939)

The Working Committee of the All-India Muslim League appreciate the course adopted by H. E. the Viceroy in inviting Mr. M. A. Jinnah, President of the All-India Muslim League, and apprising him of the position regarding the international situation resulting in war and his own views, to be conveyed to the Muslim League. The Working Committee have given their most earnest consideration to H. E. the Viceroy's views conveyed to them by the President and also to the pronouncement made by the Viceroy

Viceroy's
consultation
with Mr.
Jinnah

since the declaration of war by Great Britain as also His Excellency's address to the members of the Central Legislature on September 11, 1939.

Condemnation of Federal Scheme

The Committee are of opinion that the views expressed by the Council of the All-India Muslim League by its resolution No. 8 of August 27, 1939, in the following words: 'While deploring the policy of the British Government towards the Muslims of India by attempting to force upon them against their will a constitution and in particular the Federal Scheme as embodied in the Government of India Act, 1935, which allows a permanent hostile communal majority to trample upon their religious, political, social and economic rights and the utter neglect and indifference shown by the Viceroy and the Governors in the Congress-governed provinces in exercising their special powers to protect and secure justice to the minorities and towards the Arabs in Palestine in refusing to meet their demands, holds the view that in these circumstances if the British Government desires to enlist the support and the sympathy of the Muslims of the world and particularly of the Indian Muslims in future contingencies it must meet the demands of the Muslims of India without delay,' are the true sentiments and opinions of the Mussalmans of India.

Suspension of Federal Scheme

The Working Committee appreciate the declaration of H. E. the Viceroy, which is in the interest of India and particularly the Mussalmans, that the Federal Scheme embodied in the Government of India Act, 1935, has been suspended¹. They wish that instead of its being suspended, it had been abandoned completely and desire to convey to His Majesty's Government that they should do so without further delay. The Committee desire to make it clear that they do not endorse the "Federal objective" of His Majesty's Government referred to by H. E. the Viceroy in his address to the members of the Central Legislature and strongly urges upon the British

1 In his address to the Central Legislature (September 11, 1939) Lord Linlithgow declared that all preparations for the introduction of Federation had been suspended, but the objective of Federation was still intact.

Government to review and revise the entire problem of India's future constitution *de novo* in the light of the experience gained by the working of the present provincial constitution of India and developments that have taken place since 1935 or may take place hereafter.

Constitutional problem to be studied *de novo*

The Committee, in this connection, wish to point out that Muslim India occupies a special and peculiar position in the polity of India, and for several decades it had hoped to occupy an honourable place in the national life, government and administration of the country and worked for a free India with free and independent Islam in which they could play an equal part with the major community with a complete sense of security for their religious, political, cultural, social and economic rights and interests; but the developments that have taken place, and especially since the inauguration of the provincial constitution based on the so-called democratic parliamentary system of government and the recent experiences of over two years have established beyond doubt that it has resulted wholly in a permanent communal majority and the domination of the Hindus over the Muslim minorities whose life and liberty, property and honour, are in danger and even their religious rights and culture are being assailed and annihilated every day under the Congress Government in various provinces.

Special position of Muslims

Provincial Autonomy condemned

That while Muslim India stands against exploitation of the people of India and has repeatedly declared in favour of a free India it is equally opposed to the domination of the Hindu majority over Mussalmans and other minorities and vassalization of Muslim India and is irrevocably opposed to any "Federal objective" which must necessarily result in a majority community rule under the guise of democracy and a parliamentary system of government. Such a constitution is totally unsuited to the genius of the peoples of the country which is composed of various nationalities and does not constitute a national State.

Opposition to domination of Hindu majority

**Condition
for Muslim
co-operation
with British
Govern-
ment**

**Special]
powers of
Governors
invoked**

**League
wants
veto on
India's
progress,**

The Muslim League condemns unprovoked aggression and the doctrine that 'might is right' and upholds the principles of freedom of humanity and 'that the will of the strongest irrespective of right and justice cannot be allowed to prevail.' The Committee express their deep sympathy for Poland, England and France. The Committee, however, feels that real and solid Muslim co-operation and support to Great Britain in this hour of her trial cannot be secured successfully if His Majesty's Government' and the Viceroy are unable to secure to the Mussalmans justice and fairplay in the Congress-governed provinces where today their liberty, person, property and honour are in danger and even their elementary rights are most callously trampled upon. The Committee strongly urge upon His Majesty's Government and the Viceroy and Governor-General to direct the Governors to exercise their special powers where any Provincial Ministry fail to secure justice and fairplay to the Mussalmans or where they resort to oppression or interference with their political, economic, social and cultural rights, in accordance with the sacred promises, assurances and declarations repeatedly made by Great Britain, in consequence of which these special powers were expressly embodied in the statute. The Committee regret to say that so far these special powers have remained dormant and obsolete and the Governors have failed to protect the rights of the Mussalmans under the threat by the High Command of the Congress that exercise of these special powers on the part of the Governors will lead to a crisis in all the Congress-governed provinces where they are in solid majority.

While the Muslim League stands for the freedom of India, the Committee further urge upon His Majesty's Government and asks for an assurance that no declaration regarding the question of constitutional advance for India should be made without the consent and approval of the All-India Muslim League nor any constitution be framed and finally adopted by His Majesty's Government and the British Parliament without such consent and approval.

The policy of the British Government towards the Arabs in Palestine has wounded deeply Muslim feeling and sentiment and all representations in that behalf have had no real effect so far. The Committee once more urge upon His Majesty's Government to satisfy the Arab national demands.

Arabs of Palestine

If full, effective and honourable co-operation of the Mussalmans is desired by the British Government in the grave crisis which is facing the world today and if it is desired to bring it to a successful termination it must create a sense of security and satisfaction amongst the Mussalmans and take into its confidence the Muslim League which is the only organisation that can speak on behalf of Muslim India.

Muslim League is "the only organisation that can speak on behalf of Muslim India".

At this critical and difficult juncture the Committee appeal to every Mussalman to stand solidly under the flag of the All-India Muslim League with a solemn and sacred determination to make every sacrifice, for on it depend the future destiny and honour of the 90 millions of Mussalmans in India.

54. THE BRITISH GOVERNMENT AND THE WAR.

I. Statement of Lord Linlithgow, October 17, 1939.

Since the outbreak of the war, and, more particularly, during the last four weeks I have been in the closest touch with the leaders of political opinion in British India and with representatives of the Princely Order; and I have spared no effort to acquaint myself by personal discussion with the trend of feeling, to ascertain the views of the different sections of public opinion in this country on the great questions of the day, and in particular on this question of the basis on which and the extent to which India could best co-operate in the prosecution of the war; and to satisfy myself as to the extent to which a basis of common agreement exists, and as to the manner in which the position, so far as it may still remain obscure, can best be clarified. Matters have now reached a point of which, in my judgment, it would be well that I should make a statement. . . .

Attempt to "ascertain the views of the different sections of public opinion in this country"

**"Full and
frank
discussion"
with 52
leaders**

. I have had the advantage of a full and frank discussion with no fewer than 52 people—with Mr. Gandhi, with the President and members of the Congress Working Committee, with Mr. Jinnah and with representative members of the Muslim League organisation, with the Chancellor of the Chamber of Princes, and with a great variety of persons prominent in the political life of British India.

**Many
different
points of
view and
"markedly
different
demands"**

As was only to be expected, conversations with representatives of so many different points of view revealed marked differences of outlook, markedly different demands, and markedly different solutions for the problems that lie before us. Again, and that too was what might have been expected at a time such as the present, reservations or demands for special protection on one side have tended to be balanced by proposals for still more marked constitutional changes on another. I would ask that these differences of view, deeply and sincerely held, I have not the least doubt, by those who have advanced them to me, should be borne in mind when we consider our present problems, for they have a very direct and obvious relevance to them.

**Three
essential
matters for
clarification**

The essential matters on which a clarification of the position is beyond any question desired are :—

First, what are the objectives of His Majesty's Government in the war ? To what extent are they of such a character that India with her long history and great traditions can, with a clear conscience, associate herself with them ?

Second, what is the future that is contemplated in the constitutional sphere for the Indian continent ? What are the intentions of His Majesty's Government ? Is it possible to define those intentions more precisely and in such a manner as to leave the world in no doubt as to the ultimate status envisaged for India as far as the British Commonwealth is concerned ?

"Third, in what way can the desire of India and of Indian public opinion for a closer association, and an effective association, with the prosecution of the war be satisfied ?

Let me deal with these questions in the order in which I have stated them. Let me in the first place consider to what extent in existing conditions and at this stage in the development of the campaign in which we are engaged any positive and satisfactory answer admits of being given to the demand for a more precise definition of our objectives. In endeavouring to answer that question I do not propose to touch on the question of our objectives for India. That is a matter which I will deal with separately in answering the second question which I have mentioned above. His Majesty's Government have not themselves yet defined with any ultimate precision their detailed objectives in the prosecution of the war. It is obvious that such a definition can come only at a later stage in the campaign, and that when it does come, it cannot be a statement of the aims of any single ally. There may be many changes in the world position and in the situation that confronts us before the war comes to an end, and much must depend on the circumstances in which it does come to an end, and on the intervening course of the campaign.

British
objects
in war not
yet precisely
defined

The experience of all history shows in these circumstances the unwisdom and the impracticability of precise definition at so early a stage as that which we have now reached. But the fact that, for the reasons I have given, precise definition is not practicable does not mean, as I see it, that there is any real doubt, or any uncertainty, in the minds of the public, whether in India or in the United Kingdom or in any allied country, as to the motives which have actuated us in entering into the war, and consequently the broad general objectives which we have before us in the campaign which is now being waged. We are fighting to resist aggression whether directed against ourselves or others. Our general aims have

**General
aims of
British
Government
defined by
Prime
Minister**

been stated by the Prime Minister within the last few days as follows:—"We are seeking no material advantage for ourselves. We are not aiming only at victory, but looking beyond it to laying the foundation of a better international system which will mean that war is not to be the inevitable lot of each succeeding generation. We, like all the peoples of Europe, long for peace, but it must be a real and settled peace, not an uneasy truce interrupted by constant alarms and threats." This statement, I think, clearly establishes the nature of the cause for which we are fighting, and justifies, if justification is needed, the extension by India of her moral support and her goodwill to the prosecution of that cause.

**Future
constitu-
tional de-
velopment
of India**

Let me turn now to the second question which has been put to me--the question of India's future and of the lines of her constitutional development. That is a question, I am certain in the light of my conversations, which is of the greatest and most acute interest to all parties and all sections of opinion in this country. As matters stand to-day, the constitutional position of India and the policy of His Majesty's Government are governed by the provisions of the Government of India Act, 1935. Part III of that Act, which provides for the conferment of Provincial Autonomy on the Provinces of British India, has been implemented. For nearly two and a half years now the Provinces have been conducting their own affairs under the scheme of the Act. That they have done so, on the whole, with great success, even if now and then difficulties have arisen, no one can question. Whatever the political party in power in those Provinces, all can look with satisfaction on a distinguished record of public achievement during the last two and a half years. The experience that they have had has shown beyond any question that whatever minor problems the application of the scheme of the Act may have presented, whatever difficulties may have confronted us in the operation of the Act from time to time in the Provincial sphere, the scheme of the Act is essentially sound, and that it

**Value of
Provincial
Autonomy**

transfers great power and great opportunities to popularly elected Governments dependent on the support of a majority in their legislatures.

The second stage contemplated by the Act was the reconstitution of the Central Government on such a basis as to achieve the essential goal of Indian unity. The method contemplated for that purpose was the achievement of a Federation of All-India, in which the representatives of all political parties in British India would, together with the Rulers of the Indian States, form a unified Government of India as a whole. I am only too conscious of the severity of the criticisms that have been advanced from many different points of view against the Federal scheme and against the arrangements embodied in Part II of the Act. I will say to-day no more than that, having myself had so close a familiarity not only with the framing of the provisions, but with the preliminary work which has been done with a view to putting them into force, I have throughout believed that the Federal Scheme in its operation would have turned out as satisfactorily as, broadly speaking, we can all of us regard the scheme of Provincial Autonomy as having turned out. I will not dilate on that subject to-day, for our work in connection with the Federal Scheme has been suspended. But in reaffirming, as I do, my belief in the essential soundness of the Federal aspects of the Act of 1935, I do so with the greater emphasis because of the evidence which the Federal provisions of the Act constitute, of the anxiety of His Majesty's Government to achieve, with the minimum of delay, and on the basis which appears to represent the greatest amount of agreement between the various parties and interests affected by the unity of India, and to advance beyond a further and a most important milestone on the road to India's goal.

Such being the background against which we are working, what are the intentions and aims of His Majesty's Government in relation to India? I cannot do better in reply to that question than to

**Question of
Federation**

**"Essential
soundness"
of Federal
Scheme**

**Previous
statements
on British
policy**

refer to the statement¹ made on behalf of His Majesty's Government, and with their full authority, by the late Secretary of State for India in the House of Commons on February 6, 1935. That statement makes the position clear beyond a shadow of doubt. It refers to the pledge given in the Preamble of the Act of 1919, and it makes it clear that it was no part of the plan of His Majesty's Government to repeal that pledge. It confirms equally the interpretation placed in 1929 by Lord Irwin as Viceroy, again on the authority of the Government of the day, on that Preamble, that "the natural issue of India's progress as there contemplated is the attainment of Dominion Status". I need not dilate on the words of that statement. They are clear and positive. They are enshrined in the Parliamentary record. They stand as a definite and categorical exposition of the policy of His Majesty's Government to-day, and of their intentions to-day in this end—the future constitutional development and position of India. I would add only that the Instrument of Instructions issued to me as Governor-General by His Majesty the King-Emperor in May, 1937, lays upon me as Governor-General a direction so to exercise the trust which His Majesty has reposed in me "that the partnership between India and the United Kingdom within our Empire may be furthered to the end that India may attain its due place among our Dominions."

**Act of 1935
based on
common
agreement**

That is the policy and that is the position. Those are the intentions of His Majesty's Government. Let me go on to say another word about the Act of 1935. That Act was based on the greatest measure of common agreement which it was possible to obtain at the time when it was framed. It was based, as is well-known to all of us, on the common labours of British and Indian statesmen, and of representatives of British India as well as of the Indian States over a long period of years. All parties were at one stage or other closely associated

¹ See p. 252.

with those deliberations, and I can speak from personal experience when I bear tribute to the extreme anxiety of all those of us on whom, in the Joint Select Committee, there fell the more particular responsibility for devising proposals for the consideration of Parliament, to ensure that the fullest account had been taken of all interests, of the views of all political parties, and that nothing had been left undone to ensure that the outcome of our labours reflected the greatest measure of agreement practicable in the conditions that confronted us.

Be that as it may, His Majesty's Government recognise that when the time comes to resume consideration of the plan for the future Federal Government of India, and of the plan destined to give effect to the assurances given in Parliament by the late Secretary of State, to which I have just referred, it will be necessary to reconsider in the light of the then circumstances to what extent the details of the plan embodied in the Act of 1935 remain appropriate. And I am authorised now by His Majesty's Government to say that at the end of the war they will be very willing to enter into consultation with representatives of the several communities, parties, and interests in India, and with the Indian Princes, with a view to securing their aid and co-operation in the framing of such modifications as may seem desirable.

I have, I trust, in what I have just said, made clear that the intention and the anxiety of His Majesty's Government is, as stated in the Instrument of Instructions to the Governor-General, to further the partnership between India and the United Kingdom within the Empire to the end that India may attain her due place among the great Dominions. The scheme of government embodied in the Act of 1935 was designed as an essential stage in that process. But I have made clear in what I have just said that His Majesty's Government will, at the end of the war, be prepared to regard the scheme of the Act as open to modification in the light of Indian views.

Question of
revising
Act of 1935

Act of 1935
open to
modification
in the light
of Indian
views

And I would make it clear, too, that it will be their object, as at all times in the past it has been, to spare no pains to further agreement by any means in their power in the hope of contributing to the ordered and harmonious progress of India towards her goal.

**Assurance
to minori-
ties**

Let me in that connection add that in the conversations I have had, representatives of the minorities have urged most strongly on me the necessity of a clear assurance that full weight would be given to their views and to their interests in any modifications that may be contemplated. On that I need say no more than that over more than a decade ago at the three Round Table Conferences, and at the Joint Select Committee, His Majesty's Government consulted with and had the assistance or the advice of representatives of all parties and all interests in this country. It is unthinkable that we should now proceed to plan afresh or to modify in any respect any important part of India's future constitution without again taking counsel with those who have in the recent past been so closely associated in a like task with His Majesty's Government and with Parliament.

That some even more extensive scheme than I have mentioned, some even more widely phrased indication of the intentions of His Majesty's Government, is desired in certain quarters in this country, I am fully aware from the conversations I have had during these last few weeks. That that is a desire held with sincerity and that those who hold it are convinced that it is in the manner in question that the future progress and development of India and the expressed intentions of His Majesty's Government can best be fulfilled, I fully and readily accept. I would utter one word only of caution. And if I say that the situation must be faced in terms of world politics and of political realities in this country, I do so from no lack of sympathy and no lack of appreciation of the motives that weigh with the people of India and the ideals that appeal to them. But I would

urge that it is essential in matters of this nature, affecting the future of tens of millions of people, affecting the relations of the great communities, affecting the Princes of India, affecting the immense commercial and industrial enterprises, whether Indian or European, in this country, that the largest measure of agreement practicable should be achieved. With the best will in the world, progress must be conditioned by practical considerations. I am convinced myself, if I may say so with the utmost emphasis, that having regard to the extent of agreement which in fact exists in the constitutional field, and on this most difficult and important question of the nature of the arrangements to be made for expediting and facilitating the attainment by India of her full status, there is nothing to be gained by phrases which, widely and generally expressed, contemplate a state of things which is unlikely to stand at the present point of political development the test of practical application, or to result in that unified effort by all parties and all communities in India on the basis of which alone India can hope to go forward as one and to occupy the place to which her history and her destinies entitle her. I would ask that these words of caution be not taken as indicating any lack of sympathy on the part of His Majesty's Government for the aspirations of India, or any indifference to the pace of her advance; and I would repeat that His Majesty's Government are but concerned to use their best endeavours, now as in the past, to bring about that measure of agreement and understanding between all parties and all interests in this country which is so essential a condition of progress towards India's goal.

**Largest
measure of
agreement
necessary
for consti-
tutional
progress**

I turn now to the arrangements to be made to secure the association of public opinion in India with the conduct of the war. India's contribution has already been great, great to a degree which has impressed the imagination of the world. At the head of the list I would put the contribution which India had made in spiritual, and not in material,

**India's
contribution
to war**

How to
associate
Indian
public
opinion
with con-
duct of
war

terms,—the support of her peoples for a 'cause which they can regard as a good and a righteous cause. In the material field equally her contribution is already most significant and may be greater still. And in the circumstances the desire, the anxiety of public opinion in India to be associated with the conduct of the war is naturally one with which I personally have throughout felt the greatest sympathy. In the circumstances I have described, the desirability of steps to ensure that leaders of public opinion should be in the closest touch with developments is of the first importance.

Establish-
ment of
'a consulta-
tive group'

I have discussed with the utmost frankness with the leaders of the various parties who have been good enough to come to see me in connection with the constitutional position by what machinery we could best give effect to this desire. We have examined a variety of expedients, and there has been no hesitation on the part of any of us in assessing the advantages and the disadvantages presented by each of them. I do not propose to-day to examine those various alternatives in particular detail. I will only say that in the light of my conversations and of the views (by no means always in accord) of representatives of the great parties and of the Princes, I am of opinion that the right solution would be the establishment of a consultative group, representative of all major political parties in British India and of the Indian Princes, over which the Governor-General would himself preside, which would be summoned at his invitation, and which would have as its object the association of public opinion in India with the conduct of the war and with questions relating to war activities.

This group, for practical reasons, would inevitably be limited in size. But His Majesty's Government contemplate that it should be fully representative and in particular that its personnel should be drawn by the Governor-General from panels prepared by the various major political parties, from which a selection of individuals to attend meetings of the

group would be made by the Governor-General. I hope in the very near future to enter into consultation with political leaders and with the Princes on this question. I have no doubt whatever that an arrangement of this nature will most materially contribute to associating the Indian States and British India with the steps which are being taken for the prosecution of the war and with the arrangements that are being made in that connection.

And I am confident, too, that in an association of this nature of representatives of all parties and all interests, there lies the germ of that fuller and broader association of all points of view in this country which contain in it the seeds of such advantage for the future of India as a whole.

When I spoke to the Central Legislature a month ago, I made an appeal for unity. I would repeat that appeal to-day. It is my earnest hope that the explanations I have given will have contributed materially to the removal of misunderstandings. Even if on certain points I have not, to my knowledge, been able to give assurances so comprehensive as those which would, I know, have been welcomed in certain political quarters in India, I would urge insistently that this is not a moment at which to risk the splitting of the unity of India on the rock of particular phrases, and I would press that we should continue to aim at the unity of India even if differences of greater or less significance continue to exist.

We live in difficult and anxious days. Great ideals are in issue. Dangers, real and imminent, face our civilization. Those dangers are as imminent in the case of India as of any other member of the British Commonwealth of Nations. Those ideals are as precious to India as to any country in the Empire or in the world. At this grave moment in the destinies of nations, my prayer to all parties would be not to dissociate themselves from the common effort, but to lend their co-operation and their assistance in the prosecution of the war. There could be no more

How
'consultative group'
to be
selected

Appeal for
unity

Appeal for
co-operation

decisive proof of India's fidelity to her best traditions than the full use of the opportunities afforded to her by the war for concerted endeavour. The ideals we have set before us, the objects to secure which we are engaged in the present struggle, are such as to command widespread sympathy and widespread support in India. They are in harmony with her past history and her highest traditions. It is my hope that in the grave juncture which we face, India will go forward as a united country in support of a common cause.

II. Statement of Lord Zetland,¹ House of Lords, October 18, 1939.

**Violent
protest of
Indian
people
against
Nazi
outrages**

It will perhaps be for the convenience of your Lordships if I preface what I have to say with a brief objective account of events in India immediately preceding and following the invasion of Poland by Germany. On the outbreak of the war one thing was immediately made apparent and that was that the overwhelming feeling of the Indian people from one end of the country to the other was one of violent protest against the outrage committed by the Nazi Government against decencies of civilised existence and of deep detestation of all that the international methods associated with the name of Hitler stands for and that feeling, as I pointed out in the course of a few words which I addressed to your lordships on September 26, found expression in spontaneous support from men and women of all creeds and classes and communities.

**Policy of
Congress**

Yet while this was so, it was a fact that the most numerous and most powerful political party in India, the Indian National Congress, had committed itself some time earlier to a specific attitude in the event of war breaking out in which Great Britain was involved. Their attitude was further defined when early in August they took exception to certain precautionary measures taken by His Majesty's Government and the Government of India in pursuance of

¹ Secretary of State for India.

their obligation to secure the safety of India and as an indication of their disapproval of the action taken, they called upon the Congress members of the Central Legislative Assembly to refrain from attending the forthcoming session.

The particular measure to which exception was taken was the despatch of external defence troops from India to Egypt and Aden and Singapore. This action was taken on the urgent advice of the highest naval and military authorities. The situation, at that time, was such that the possibility of a threat to the safety of India, both from west and from east, could not be excluded and from the military point of view it was essential that the western and eastern approaches to India should be adequately defended. It would clearly have been the height of folly to have given the world by discussion in the legislature advance notice of our military dispositions.

**Despatch of
troops to
Egypt etc.**

Nevertheless, both the Viceroy and I were anxious to take leaders of political parties in India into our confidence and our plans were, therefore, communicated to the leaders of political parties in the Assembly, including, of course, the Congress party.

So much for the precautionary measures to which exception was subsequently taken. I now come to the outbreak of war. For a long time past, the Viceroy with my full knowledge and approval has been in close touch with the most outstanding figure on the Indian political stage—Mahatma Gandhi it was natural that immediately on the outbreak of war the Viceroy should have invited Mr. Gandhi to take counsel with him. The invitation was promptly accepted and within forty-eight hours of the declaration of war they were in close consultation. The outcome is known, for Mr. Gandhi has himself stated publicly that, speaking in his purely personal capacity—for he was not authorised to speak for the Congress—his view was that in the struggle upon which this country had entered, India should give us unconditional support. Thereafter,

**Viceroy's
interview
with
Mahatma
Gandhi**

the Working Committee of the Congress met at Wardha to consider the situation and they invited to their Council Room not only members of the Working Committee but others, including Pandit Jawaharlal Nehru and Mr. Subhas Bose.

**Working
Committee's
resolution
of Septem-
ber 14, 1939**

It was not, however, until September 15, that the result of their deliberations was made known in the form of a comprehensive statement. Such a document, setting forth as it did the views of the most powerful political party in India, called for the most careful consideration. . . .broadly speaking, the effect of it was, while condemning unequivocally the action of the German Government, to make it clear before they, as a party, decide to give us their support, they would wish to be informed of our war aims and in particular, how those aims would apply to India.

**Views of
Muslim
League**

Meanwhile, the Working Committee of the next most numerous and powerful political party in India—the All-India Muslim League, whose President, Mr. Jinnah, had also been in consultation with the Viceroy—met to take stock of the situation and issued a statement on September 18, from which it was apparent that while Muslims, equally with the Congress, unhesitatingly condemned aggression, of which the Nazi Government had been guilty, there was between their view and that of the Congress regarding the internal political situation a substantial divergence.

**Viceroy's
consulta-
tions with
leaders**

The Viceroy has been at pains to acquaint himself fully with the view of these two organisations by personal discussion with their leaders. But his consultations did not stop there, for there were the Princes, who from the first have thrown their whole weight into the scale against aggression and who had been in close contact with the Viceroy through the Chancellor of the Chamber of Princes, and there was the National Liberal Federation of India, who, . . .in the White Paper, had already made their attitude towards war plain and had offered unconditional

support to Great Britain. And over and above these, there were the leaders of other communities and interests such as the Hindu Mahasabha, the Scheduled Castes, Sikhs and Parsis, to mention only some of them, who instantly made it clear that their views and interests should not be left out of account in the discussions that were in progress.

There, then, you have the background of the Indian picture; what of the main features of the picture itself? They may be said to be two in number: first, the desire on the part of all communities to see the overthrow of the menace, which overshadows Europe in particular and the world in general, and secondly, the desire for self-expression, which takes the form, in the domain of politics, of self-government on a democratic basis. But here there are qualifications, for there is on the part of minorities insistent demand for safeguards against consequences which, rightly or wrongly, it is feared, might result from unfettered domination of the majority.

Main
features of
the Indian
picture

And herein is to be found the root cause of our difficulties—difficulties which those who are not burdened with the responsibility which rests upon His Majesty's Government and the Government of India, may—and frequently do—discount, but which His Majesty's Government themselves cannot ignore. For those who confine their gaze to one part only of the picture, the problem of self-government for India may appear to be a comparatively simple one, but for those who, like His Majesty's Government, have to view the picture as a whole, this is far from being the case. I shall have something to say on that aspect of the case before I resume my seat.

Difficulties

Meanwhile, let me say that it is in our view eminently desirable that consultations with the leaders of public opinion in India, which the Viceroy has initiated since the outbreak of war—I think he has seen more than fifty leaders—should not only be maintained, but should be provided for by some more definite machinery. One means proposed for the achieve-

**"Broadly
based
consulta-
tive body"**

ment of that object are set out by the Viceroy in his statement. Briefly stated, what we have in mind is a broadly based consultative body, whose personnel would be drawn by the Viceroy from panels of individuals nominated by various political parties and interests.

**"Liaison
between
Government
and people"**

From this main body the Viceroy, who would himself preside over its deliberations, would summon members to attend particular meetings at which, according to the business to be taken into consideration, their presence was desirable. Such a body would serve as a 'liaison' between the Government and the people since it would have imparted to it views and proposals of the Government and in its turn would be in a position to give free and frank expression to its opinions on all matters laid before it. These might well include matters which, in times of war, it would be inconvenient to discuss in a more public manner.

Such a scheme would possess this further advantage; that those concerned, representing different parties, communities and interests, would be in close association not only with the Viceroy but also with one another and it would be my hope that the association and collaboration in so great an enterprise as the conduct of war would tend gradually to lessen the differences and emphasise the extent of the common interest of all those taking part in it and of those whom they represent.

**"Eventual
goal" of
political
evolution
in India**

I should like, in conclusion, to say a few words of a more general character. Responsible self-government for India is the goal set forth by Parliament in the Preamble of the Act of 1919; and it was with the full authority of the Government of the day that my noble friend the Foreign Secretary¹ stated ten years later that the natural issue of India's progress as there contemplated—that is to say, in the Preamble of the Act of 1919—was the attainment of Dominion Status.

1 Lord Halifax (Formerly Lord Irwin).

From that objective we never have had and have not now the smallest intention of departing. The purpose of the Act of 1935 was to provide that machinery whereby the people of India might acquire that measure of political unity, which surely is the pre-requisite to the attainment by them of their eventual goal. Much has been said in disparagement of the measure, yet it should not be forgotten that it was the outcome of immense labour on the part of Indians and Britons alike and was based on the greatest measure of common agreement which was then obtainable.

And I would add this that even in the case of a written constitution provisions of the Statute are no more than the bony skeleton of a structure; flesh and blood, which give it life and vigour, are added day by day by those engaged in working it. Within the framework practices take root and conventions grow up. The constitution becomes a living and growing organism deriving form and substance from its environment. The truth of that has been demonstrated by the two years' working of the Act in so far as it affects the provinces of British India, as I feel sure the Ministers of to-day, some of whom a little more than two years ago rejected it as of little worth, will be willing to admit. I believe that similar experience of the working of the federal provisions of the Act would be attended by similar results.

But if, at the end of the upheaval caused by the war, when the circumstances may well differ markedly from what they are to-day, there is a desire on the part of those concerned for modifications of particular features of the plan, then His Majesty's Government declare now that they will in such circumstances be very willing to enter into consultation with representatives of the several communities, parties and interests in India and with Indian Princes with a view to securing their aid and co-operation in the framing of such modifications as may then seem desirable.

Act of 1935

**Provincial
Autonomy
at work**

**Modifica-
tion of Act
of 1935
after war, if
necessary**

INDIAN CONSTITUTIONAL DOCUMENTS

I say then because, in my view, it is not practicable, nor do I believe that it would be in the true interest of the people of India themselves to endeavour, while we are all labouring under the strain and stress of a life-and-death struggle, to embark upon the task of immense complexity and one, moreover, which would inevitably give rise to no little controversy in India itself.

Communal problem

And that brings me back to what I said earlier in the course of my remarks as to the root cause of the difficulties in the domain of constitutional building in India. What we have to work for is elimination of those communal antagonisms which still militate against the political unity of India.

You cannot abolish them by merely closing your eyes to their existence. You must face them and search for means to remove their underlying forces. I believe that the menace, which now confronts all of us, Englishmen, Hindus, Muslims, Princes and peoples alike, may aid us to achieve what hitherto has eluded our grasp. Can we not, standing shoulder to shoulder for a common purpose, be banded together in the comradeship of arms and learn to view in truer perspective against the background of the supreme and imminent peril—for what would it profit India if the forces of aggression and of evil emerged victorious from this war—those internal and domestic differences which have hitherto raised such formidable obstacles along the road to that goal towards which the peoples of both countries have determined to travel.

Appeal to "peoples" of India

This then is my appeal to the peoples of India that in comradeship with us while presenting a united front to the forces ranged against us they strive after that agreement among themselves without which they will surely fail to achieve that unity, which is an essential of nationhood of which those with vision among her leaders have long dreamed and which must surely be the crowning achievement of long and intimate political relationship between the peoples of Great Britain and India.

**III. Statement of Lord Linlithgow,
November 5, 1939.**

War was declared on the 3rd September. In a broadcast that night I appealed to all parties and all sections in India to co-operate in its prosecution. On the following day I saw Mr. Gandhi in Simla, and I discussed the whole position freely with him. I similarly took immediate steps to see Mr. Jinnah as representing the Muslim League. Nor did I fail to see the Chancellor of the Chamber of Princes.

**Viceroy's
contact
with Indian
leaders**

Thereafter the general question came for consideration before the Congress Working Committee and the Working Committee of the Muslim League. The Working Committee of the Congress met on the 14th of September. They condemned Nazi aggression in decisive terms. But they postponed final decision so as to allow for the full elucidation of the issues at stake, the real objectives aimed at, and the position of India in the present and in the future, and they invited the British Government to declare in unequivocal terms what were their war aims and how those aims would apply to India, and be given effect to in the present.

**Congress
policy**

The Working Committee of the Muslim League on the 18th of September similarly asked, 'if full, effective, and honourable co-operation of the Mussalmans is desired', that 'a sense of security and satisfaction' should be created amongst Muslims, and referred in particular to the position of the Muslims in Congress Provinces, and to the necessity for consulting the Muslims fully regarding any change in the existing constitution and securing their consent and approval.

**League
policy**

I now again got in touch with Mr. Gandhi, Mr. Jinnah and the Chancellor of the Chamber of Princes. I decided that, given the great divergence of view which clearly existed between the two major political parties in British India, I must satisfy myself as to the trend of feeling in the country. In pursuance of that object I interviewed over 50 people, representing

**Viceroy's
discussion
with 'over
50 leaders'**

Congress demand

all parties, communities, and interests. While those conversations were proceeding, the All-India Congress Committee, on the 10th of October, passed a resolution repeating the demand of the Working Committee for a statement by His Majesty's Government of their war aims and peace aims. They demanded also that India should be declared an independent nation and that present application of this status should be given to the largest possible extent.

I reported my conversations in detail to His Majesty's Government.....It was in the light of profound consideration and long discussion that on the 17th October I made a Declaration on behalf of His Majesty's Government. . . .

Expansion of Governor-General's Executive Council

. . . . The debates in Parliament which followed the publication of my statement brought out another important point—the readiness of His Majesty's Government, if certain conditions were secured, to associate Indian opinion in a still closer and more responsible manner with the conduct of the war by a temporary expansion of the Governor-General's Executive Council¹. But the reception in British India both of my Declaration and of the subsequent debates in Parliament was, so far as the Congress was concerned, definitely hostile. The Congress Working Committee on the 22nd of October passed a resolution to the effect that my Declaration was entirely unsatisfactory, and called upon the Congress Ministries in the Provinces to resign. The Muslim League on the same day asked that certain doubts should be removed, and complete clarification of the Declaration secured, subject to which they

Resignation of Congress Ministries

1 By a communique dated July 22, 1941, the number of members of the Executive Council was increased from 7 to 12. In the new Council the number of Indian members was 8 and they were in a majority of 2 to 1. The Secretary of State for India described this expansion as 'a change not indeed in the form of the constitution but in its spirit'. By a Press Note dated July 3, 1942, it was announced that membership of the Executive Council had been increased from 12 to 15, with 11 non-official Indians, 1 non-official European and 3 European officials (including the Commander-in-Chief).

empowered their President, if fully satisfied, 'to give an assurance of co-operation and support on behalf of the Mussalmans of India to the British Government for the purpose of prosecution of the war'.

Muslim League's conditional offer of co-operation

55. MAHATMA GANDHI ON CONSTITUENT ASSEMBLY, 1939. (November 19, 1939)

Pandit Jawaharlal Nehru has compelled me to study, among other things, the implications of a Constituent Assembly. When he first introduced it in the Congress resolutions, I reconciled myself to it because of my belief in his superior knowledge of the technicalities of democracy. But I was not free from scepticism. Hard facts have, however, made me a convert and, for that reason perhaps, more enthusiastic than Jawaharlal himself. For I seem to see in it a remedy, which Jawaharlal may not, for our communal and other distempers, besides being a vehicle for mass political and other education.

Value of Constituent Assembly

The more criticism I see of the scheme, the more enamoured I become of it. It will be the surest index to the popular feeling. It will bring out the best and the worst in us. Illiteracy does not worry me. I would plump for unadulterated adult franchise for both men and women, i.e., I would put them all on the register of voters. It is open to them not to exercise it if they do not wish to. I would give separate vote to the Muslims; but, without giving separate vote, I would, though reluctantly, give reservation, if required, to every real minority according to its numerical strength.

"Separate vote to Muslims"

Thus the Constituent Assembly provides the easiest method of arriving at a just solution of the communal problem. Today we are unable to say with mathematical precision who represents whom. Though the Congress is admittedly the oldest representative organisation on the widest scale, it is open to political and semi-political organisations to question, as they do question, its overwhelmingly represen-

Represent-
tation of all
communi-
ties in
exact
proportion

tative character. The Muslim League is undoubtedly the largest organisation representing Muslims, but several Muslim bodies—by no means all insignificant—deny its claim to represent them. But the Constituent Assembly will represent all communities in their exact proportion. Except it there is no other way of doing full justice to rival claims. Without it there can be no finality to communal and other claims.

Wanted—
"constitu-
tion indi-
genous to
the coun-
try"

Again the Constituent Assembly alone can produce a constitution indigenous to the country and truly and fully representing the will of the people. Undoubtedly such a constitution will not be ideal, but it will be real, however imperfect it may be in the estimation of the theorists or legal luminaries. Self-government to be self-government has merely to reflect the will of the people who are to govern themselves. If they are not prepared for it, they will make a hash of it. I can conceive the possibility of a people fitting themselves for right government through a series of wrong experiments, but I cannot conceive a people governing themselves rightly through a Government imposed from without, even as the fabled jackdaw could not walk like a peacock with feathers borrowed from his elegant companion. A diseased person has a prospect of getting well by personal effort. He cannot borrow health from others.

Success of
Constituent
Assembly
depends on
Britain's
readiness to
part with
power.

The risks of the experiment are admitted. There is likely to be impersonation. Unscrupulous persons will mislead the illiterate masses into voting for wrong men and women. These risks have to be run, if we are to evolve something true and big. The Constituent Assembly, if it comes into being—as I hope it will—as a result of an honourable settlement between us and the British people, the combined wit of the best men of the two nations will produce an Assembly that will reflect fairly and truly the best mind of India. Therefore the success of the experiment at the present stage of India's history depends upon the intention of the British statesmen to part

with power without engaging India in a deadly unorganised rebellion. For I know that India has become impatient. I am painfully conscious of the fact that India is not yet ready for non-violent civil disobedience on a mass scale. If, therefore, I cannot persuade the Congress to await the time when non-violent action is possible, I have no desire to live to see a dog-fight between the two communities. I know for certain that, if I cannot discover a method of non-violent action or inaction to the satisfaction of the Congress and there is no communal adjustment, nothing on earth can prevent an outbreak of violence resulting for the time being in anarchy and red ruin. I hold that it is the duty of all communities and Englishmen to prevent such a catastrophe.

Apprehension of "dog fight between the two communities"

The only way out is a Constituent Assembly. I have given my own opinion on it, but I am not tied down to the details. When I was nearly through with this article, I got the following wire from Syed Abdulla Brelvi: "Considerable misapprehensions among minorities (about) Constituent Assembly. Strongly urge clarification details, franchise, composition, methods arriving decision." I think I have said sufficient in the foregoing to answer Syed Saheb's question. By minorities he has Muslims principally in mind as represented by the Muslim League. If once the proposition that all communities desire a charter of independence framed by a Constituent Assembly, and that they will not be satisfied with anything else, is accepted, the settling of details surely becomes easy. Any other method must lead to an imposed constitution mostly undemocratic. It would mean an indefinite prolongation of imperialistic rule sustained by the help of those who will not accept the fully democratic method of a Constituent Assembly.

Position of minorities in Constituent Assembly

The principal hindrance is undoubtedly the British Government. If they can summon a Round Table Conference as they propose to do after the

British Government — "principal hindrance"

1 Nationalist Muslim, editor of *The Bombay Chronicle*.

War, they can surely summon a Constituent Assembly subject to safeguards to the satisfaction of minorities. The expression 'satisfaction of minorities' may be regarded as vague. It can be defined beforehand by agreement. The question thus resolves itself into whether the British Government desire to part with power and open a new chapter in their own history. I have already shown that the question of the Princes is a red herring across the path. European interests are absolutely safe so long as they are not in conflict with 'the interests of India'. I think this expression finds place in the Irwin-Gandhi Pact.

Look at the question from any standpoint you like, it will be found that the way to democratic Swaraj lies only through a properly constituted Assembly, call it by whatever name you like. All resources must, therefore, be exhausted to reach the Constituent Assembly before direct action is thought of. A stage may be reached when direct action may become the necessary prelude to the Constituent Assembly. That stage is not yet.

56. MR. JINNAH ON "DELIVERANCE DAY"¹, 1939.

I. Appeal for observance of "Deliverance Day", Bombay, December 2, 1939.

I wish the Mussalmans all over India to observe Friday, the 22nd December, as the "Day of Deliverance" and thanksgiving as a mark of relief that the Congress regime has at last ceased to function. I hope that the Provincial, District and Primary Muslim Leagues all over India will hold public meetings and pass the following resolution with such modifications as they may be advised, and after Jumma prayers offer prayers by way of thanksgiving for being delivered from the unjust Congress regime. I trust that all public meetings will be conducted in an orderly manner and with all sense of humility, and nothing should be done which will cause offence to any

Instructions
to League
organisations

¹ See Coupland, *The Constitutional Problem in India*, Part II, pp. 179-194; Rajendra Prasad, *India Divided*, pp. 146-152.

other community, because it is the High Command of the Congress that is primarily responsible for the wrongs that have been done to the Mussalmans and other minorities.

Resolution: "This public meeting of the Mussalmans of (*name of the place*) records its opinion that the Congress Ministry has conclusively demonstrated and proved the falsehood of the Congress claim that it represents all interests justly and fairly, by its decidedly anti-Muslim policy. It is the considered opinion of this meeting that the Congress Ministry ~~has~~ failed to safeguard the rights and interests of the Mussalmans and other minorities and interests.

Charges
against
Congress

"That the Congress Ministry both in the discharge of their duties of the administration and in the legislature have done their best to flout the Muslim opinion, to destroy Mussalman culture, and have interfered with their religious and social life, and trampled upon their economic and political rights, that in matters of differences and disputes the Congress Ministry invariably have sided with, supported and advanced the cause of the Hindus in total disregard and to the prejudice of the Muslim interests.

Muslim cul-
ture, reli-
gion and
political
and econo-
mic rights
endangered

"The Congress Government constantly interfered with the legitimate and routine duties of District officers even in petty matters to the serious detriment of the Mussalmans, and thereby created an atmosphere that spread the belief amongst the Hindu public that there was established a Hindu Raj, and emboldened the Hindus, mostly Congressmen, to ill-treat Muslims at various places and interfere with their elementary rights of freedom. This meeting, therefore, expresses its deep sense of relief at the termination of the Congress regime in various Provinces and rejoices in observing this day as the "Day of Deliverance" from tyranny, oppression and injustice during the last two and a half years, and prays to God to grant such strength, discipline and organisation to Muslim India as to successfully prevent the advent of such a Ministry again and to

Hindu Raj
established

establish a truly popular Ministry which would do even justice to all communities and interests.

**Appeal to
Governors**

"This meeting urges upon His Excellency the Governor of (*name of the place*) and his Council or Advisors to enquire into the legitimate grievances of the Mussalmans and the wrongs done to them by the outgoing Congress Ministry, and redress the same at the earliest moment in accordance with the announcements that have been made by the Governors in taking over the government of various Provinces under Section 93 of the Government of India Act, 1935, and thus assure people that the new regime stands for even justice to all communities and interests concerned."

II. Statement to the Press on "Deliverance Day".

A great deal of unnecessary controversy has arisen over my appeal to Muslims to celebrate December 22 as a "Day of Deliverance" from oppression and, since the guilty do not admit their guilt and public memory is short, I consider it advisable to briefly trace the events that led to the reasons that prompted this appeal.

- (1) *Bande Mataram*
- (2) Congress Flag
- (3) Urdu

To commence with, the suggested resolution says nothing more or less than has been said on many previous occasions. The very first complaint against Congress rule was made by me very shortly after they took office and, in my speech at the Lucknow session of the Muslim League, 1937, I complained against the compulsory singing of the *Bande Mataram*, the question of the Congress Flag, and the supplanting of Urdu by Hindi and even then I called upon the Governors to exercise their special powers.

**Pirpur
Report**

From then onwards the Congress caucus, like the proverbial steam-roller, gathered speed and complaints of oppression began to pour into the central office. These became so numerous that the Council decided to appoint, in March, 1938, the Pirpur Committee which, after an elaborate and painstaking investigation over all the Congress provinces, submitted its report at the Patna Session in December 1938.

The following resolution was there passed at a full session : Patna resolution, 1938

"That having regard to the atrocities that have been committed and that elementary rights of the Muslims have been trampled upon in a systematic manner in Bihar, U.P. and C.P. and that the Governments of these Provinces have failed to redress their grievances or protect even the elementary rights of the Mussalmans in these provinces in spite of all constitutional methods adopted so far by the Muslims, this session of the All-India Muslim League is, therefore, of opinion that the time has now come to authorise the Working Committee of the All-India Muslim League to decide and resort to 'Direct Action' if and when necessary."

Plan for 'Direct Action'

During this time, in order to prevent direct action being resorted to, I was repeatedly urging both Governors and the Governor-General, in person or by correspondence, to exercise their special powers and to take executive action to safeguard the rights and interests of the minorities placed by the Constitution under their protection, and it was only on the 17th April, 1939, that the Viceroy intimated that he would take up the matter.

Demand for exercise of special powers by Governors and Governor-General

As regards the Congress Ministries, our complaints were dismissed as false, frivolous and vexatious and even Mr. Gandhi, before whom we placed our charges as far back as May, 1938, side-tracked the question by writing, "I believe Congress Committees have been advised to avoid as far as possible all occasions of friction over *Bande Mataram* and the Flag. . . ."

No response from Congress

With no redress, Muslims in certain provinces grew restive and in the C.P., ignoring the Working Committee altogether, resorted to direct action over the Vidya Mandir Scheme.

Vidya Mandir Scheme

I may state here that at no stage did the Working Committee favour or encourage direct action and on request being received from Bihar, in July, 1939, for

Question of direct action permission to launch direct action, the Working Committee instructed the Bihar Muslim League to place the whole case before the Governor-General, the Governor and the Prime Minister and to report later the result of their representation. Similar advice was given to the other Muslim Leagues who contemplated similar measures.

Delhi resolution, 1939 Complaints, however, continued to pour in and on the 27th August, 1939, the Council of the League at Delhi passed the following resolution:—

Criticism of 1935 Act “Resolved that this Council, while deploring the policy of the British Government towards the Muslims of India by attempting to force upon them against their will a constitution and in particular the Federal Scheme, as embodied in the Government of India Act, 1935, which allows a permanent hostile communal majority to trample upon their religious, political, social and economic rights, and the utter neglect and indifference shown by the Viceroy and the Governors in the Congress-governed Provinces in exercising their special powers to protect and secure justice to the minorities. . . .”

Viceroy's intervention In September, war was declared and on the 17th of that month, the Working Committee reaffirmed the above resolution as one of the fundamental conditions of Muslim support and the Viceroy, realising the gravity of the situation, pressed Mr. Gandhi and the Congress leaders to come to an agreement with the Muslim League in the Provincial sphere on a coalition basis for at least the duration of the war.

Rajendra Prasad's offer Consequently Babu Rajendra Prasad wrote on the 5th October that the Congress was prepared to request Sir Maurice Gwyer¹ or some other suitable person to investigate only any specific charges which the Muslim League might formulate against the Ministries of the Congress-governed Provinces.

I considered this proposal unsound and impractical for the following reasons. First, legally and constitutionally the Congress Working Committee has

1 Chief Justice of the Federal Court.

no place or power in the constitution. Secondly, the complaints of the Muslims and other minorities were directed against the Governments of certain Provinces who were responsible to the legislatures and the electorates and not to the Working Committee. Thirdly, the proposed resolution of the Working Committee could not confer upon the contemplated tribunal the necessary power to summon witnesses and administer oaths, nor could the tribunal compel the production of documents that might be required, and, finally, I wished to know to whom the tribunal was to report and who would be the final authority to take action, if any, against the Ministries.

Grounds of
rejecting
Rajendra
Prasad's
offer

If this final authority was the Working Committee I pointed out that, in my opinion, it was the Working Committee itself that was primarily responsible for the injustices and the wrongs committed and I also could not believe that any adequate action would be taken against the Ministries in view of the fact that the Working Committee had already decided that the Muslim League's charges were false and unfounded.

I also informed Babu Rajendra Prasad that I had already placed the whole matter before the Governor-General and had requested him to take executive action without delay to safeguard the interests of and to secure justice for the minorities.

I must explain at this stage that I have never asked either the Governor-General or the Governors to act as a judicial tribunal as is suggested in Mr. Gandhi's appeal to me. What I asked them to do was to take executive action to redress our grievances, and, by intervention, to secure justice and fairplay.

Nature of
appeal to
Governors
and
Governor-
General

* * * * *

However, just after my letter to Babu Rajendra Prasad the Congress Ministries resigned to the very natural relief of the Muslims and other minorities, and I immediately decided to appeal for the observance of a day to express our relief and to show its intensity in a manner that would force ears that had hitherto been deaf to listen to us. I might point out

that if our appeals had been heard at the proper time no such action on our part would now be necessary.

Reply to
criticism
of appeal
for obser-
vance of
"Deliver-
ance Day"

This appeal has been variously described as ill-timed, provocative and anti-national and that the Muslims are asked to gloat over the departure of an elected Government and to welcome an official administration.

* * * * *

As regards provocation, let me point out the words of my appeal: "I trust that all public meetings will be conducted in an orderly manner, with due sense of humility and nothing should be done which will cause offence to any community. . . ." However, to make quite clear my insistence that the day is observed in such spirit, I again state that I look to all District and Primary Leagues to ensure that the meetings are held in that spirit. Let there be no *hartals*, processions or any such demonstrations, but let a spirit of humility and a mood of reflection prevail. There is relief and gratitude in our hearts; not joy or triumph.

Thirdly, it is extremely unfair and unjust to contend that the Muslims welcome the present administration. It is true that we urge upon them to enquire into our grievances and to redress them, but this is only because it is in their power to do so. On the other hand, my appeal emphasizes that prayers should be offered for the establishment of truly popular Ministries which would do even justice to all communities and interests.

But there is one statement on my appeal that I cannot let pass coming as it does from such an authoritative source as the Chairman of the Congress Parliamentary Committee¹. I am told that all our charges are totally false and unwarranted, and that was to be expected, but I must take notice of his declaration:

"Furthermore, every Premier at my instance had invited his Governor unhesitatingly to intervene in matters affecting the rights and interests of the

minorities whenever the Governor felt that the action of the Ministry was not correct. When Mr. Jinnah recently made the charges I again instructed every Premier to invite his Governor's attention to them as they also affected him and I was informed that the Governors considered the charges unwarranted."

Sardar
Patel, on
Muslim
grievances
against
Congress
Ministries

The above statement raises a very grave issue, for it makes the Governors accessories after the fact. Let me inform Mr. Vallabhbhai Patel that we have overwhelming evidence in support of our cause and far from shirking an inquiry, as is suggested, I insist that a thorough enquiry should now be made by a properly constituted tribunal invested with all necessary powers, and I now ask that a Royal Commission be appointed by the British Government, of a purely judicial personnel and composed of judges of His Majesty's High Court and under the chairmanship of one of the Law Lords of the Privy Council.

Reply to
Sardar
Patel

Wanted—
Royal
Commission
composed
of judges

57. MR. JINNAH ON THE CONGRESS DEMAND FOR A CONSTITUENT ASSEMBLY, 1939.

(Reply to Mahatma Gandhi, December 14, 1939).

Suddenly Mr. Gandhi, who was always sceptical about the Constituent Assembly, has now become an enthusiastic convert and its champion. He has been misrepresenting and insinuating motives to the Muslim League recently—for instance, that the League is an obstacle to the progress of the country and is out to sell itself to the highest bidder—in his periodical articles published in the *Harijan*.

Criticism of
Mahatma
Gandhi

But his interview to the *News Chronicle*¹ is for the consumption of the British public. A more disingenuous statement it would be difficult to find, coming from Mr. Gandhi, and it is a pity it comes from one who is a votary of truth. His sudden affection for the Constituent Assembly is on a par with what he has striven for two decades.

¹ Mahatma Gandhi's statement on Constituent Assembly was published in *News Chronicle*.

Mahatma Gandhi's view on methods of ascertaining the people's views

"The opinion that counts is Indian opinion, not even the Congress opinion. India's opinion can be ascertained by the free vote of the people. The only true and democratic method is to ascertain their will through adult suffrage, or any agreed equivalent."

The first question will be when he says, "any agreed equivalent to adult suffrage"; between whom is that agreement to be arrived at? Secondly, if Britain is not to depend on Muslim, Hindu or any other opinion, not even Congress opinion, then what is India's opinion?

Constituent Assembly "will mean a second and larger edition of the Congress."

Now that the Congress stands exposed, that it does not represent India and that it is really a Hindu body, Mr. Gandhi is pleased suddenly to stand for a Constituent Assembly, which, in the present condition of India, will mean a second and larger edition of the Congress.

Problem of States

Having brushed aside the Indian Princes, ignoring their existence altogether, he (Mr. Gandhi) proceeds to lay down a most extraordinary proposition. "I fail to see", he says, "why Britain's intention about India should be dependent upon Muslim, Hindu or any other opinion".

Mr. Gandhi then proceeds to say, "So far as the Congress is concerned, the people of the Indian States should be represented precisely on the same footing as those of British India." Who will arrange that? And how are electorates to be established there? And what is to happen to the Treaty Rights and relationship between the British Government and the Indian Princes?

Minorities

Then he proceeds, "Muslims and other accepted minorities may be represented by separate electorates, if necessary". This is a concession, but there is no grace in it when he further proceeds to state that it should be done in exact proportion to their numbers. He knows perfectly well that they will be in a hopeless minority in the Constituent Assembly of Mr. Gandhi's conception, where he hopes to get a brute majority against the Muslims, including other minorities.

"Brute majority"

He makes a further concession that "they will determine what is required for their protection." Is the Constituent Assembly to be bound by the minority vote as to what is required for their protection and for each minority? And then comes the omnibus clause, which is fundamentally wrong and once more shows blind arrogance, when he says that in all matters of common interest the composite majority decision should prevail. Therefore, the Muslims and other minorities will have to submit to the verdict of the Assembly as to the nature, character and the form of the future constitution of India, which will presumably be dictated by Mr. Gandhi on behalf of the Congress, as for instance, Muslims and other minorities may prefer a bicameral legislature, whereas the Congress-controlled majority of the Assembly may decide against it, which, according to Mr. Gandhi, will be final.

But evidently his new-born faith in the Constituent Assembly is getting shaken a bit already, because he says if a better way than the Constituent Assembly could be found "for knowing the will of the people, so far as I know, the Congress will accept it without hesitation." Mr. Gandhi is neither concerned with the size of the country nor the illiteracy of the masses. A truly representative assembly presupposes that in order faithfully to express the judgment of the people it can only be constituted if you have a fully developed public opinion, an electorate educated and experienced, free from superstition and capable of judging the vital political issues affecting the country, and not as India stands to-day, composed of castes, creeds, superstitions and provincial jealousies, quite apart from the main division of British India and the India States.

Why a real
Constituent
Assembly
cannot
be establis-
hed in
India

The Assembly proposed by Mr. Gandhi would at best, therefore, be a packed body manoeuvred and managed by the Congress caucus. It is surprising when Mr. Gandhi complacently says that an election campaign will itself be a sufficient education for the purpose of broadly knowing the popular will.

Constituent Assembly will be "a packed body manoeuvred and managed by the Congress caucus".

But have we had sufficient evidence, under the present Constitution, though in smaller and more informed electorates? And what about the experience of the Congress (with its four-anna franchise) of abuses of power and malpractices which were eloquently condemned by Mr. Gandhi himself? It will not be the "popular will" as Mr. Gandhi professes, but it will be the will of one community, which is in an overwhelming majority.

* * * *

Gandhiji "best fitted to represent the Hindus"

Mr. Gandhi's notion of justice is to follow what he advises, then alone it can be just. I am constrained to say I wish Mr. Gandhi will stop airing views which change from day to day and week to week and which consistently perpetuate inconsistencies, and apply his mind to the only and one question, namely, settling the Hindu-Muslim question, as he, of all the Congress leaders, is best fitted to represent the Hindus as such and he can deliver the goods on behalf of the Hindus and bring about complete adjustment between the two major communities and the rest will follow. I need hardly reiterate that I am willing to help to the utmost of my power on behalf of the Muslims towards an honourable solution.

A foreign Power cannot summon a Constituent Assembly.

Apart from this academic discussion about a Constituent Assembly, it shows colossal ignorance, both historical and constitutional, to expect a foreign power that is dominating this country to sign its death warrant. The Constituent Assembly can only be real when it has got the sovereign authority of the people behind it, forged by the people, and who are in a position to convene such a supreme national body whose decisions and verdict could be respected and honoured and whose fiat and writs could be enforced. It is puerile to ask the British Government, in the first instance, to call a Constituent Assembly of another nation and afterwards have the honour and privilege of placing the constitution framed by this supreme assembly of India on the Statute Book of the British Parliament.

APPENDIX

DOCUMENTS ON INDIAN STATES

58. MONT-FORD REPORT ON INDIAN STATES.

305. . . . We wish to say that we think that the Princes should be assured in the fullest and freest manner that no constitutional changes which may take place will impair the rights, dignities, and privileges secured to them by treaties, *sanads*, and engagements, or by established practice.

**Rights of
Princes
guaranteed**

306. We have explained how, on various occasions in recent years, the Princes have met in conference at the invitation of the Viceroy. These conferences have been of great value in assisting in the formulation of the Government's policy on important matters like minority administration and succession and promoting interests in such questions as scientific agriculture and commercial and agricultural statistics. The meetings have given the princes the opportunity of informing the Government as to their sentiments and wishes, of broadening their outlook and conferring with one another, and with the Government. But although the meetings have in the last few years been regular they depend upon the invitation of the Viceroy; and our first proposal is to replace them by the institution of a Council of Princes. We wish to call into existence a permanent consultative body. There are questions which affect the States generally and other questions which are of concern either to the Empire as a whole or to British India and the States in common, upon which we conceive that the opinion of such a body would be of the utmost value. The Viceroy would refer such questions to the Council, and we should have the advantage of their considered opinion. We think it is all-important that the meetings should be regular and that ordinarily the Council should meet once a year to discuss agenda approved by the Viceroy. Any member of the Council or the Council as a whole

**Conferences
of Princes**

**Proposal for
establish-
ment of a
Council of
Princes as
a "perma-
nent
consultative
body"**

Procedure

Question of
finding an
appropriate
name for
Council of
Princes

might request the Viceroy to include in the agenda any subject on which discussion was desired. If questions of sufficient importance arose in the intervals between the annual meetings the Princes might suggest to the Viceroy that an extraordinary meeting should be held. We contemplate that the Viceroy should be president and as a rule, preside, but that in his absence one of the Princes should be the Chairman. The rules of business would be framed by the Viceroy, after consultation with the Princes who might perhaps from time to time suggest modifications in the rules. We believe that most of the Princes desire to see such a Council created, although some of the most eminent among them have not taken part in the conferences in 1916 and 1917. The direct transaction of business between the Government of India and any State would, of course, not be affected by the institution of the Council. We have used the name "Council of Princes" to describe the body which we desire to see instituted. We have had difficulty, however, in finding a name appropriate to such a unique assembly. We wish to avoid a designation associated with other institutions, and to find one which will connote the real position of this body of Rulers, with the representative of the King-Emperor as Chairman. From both these points of view the terms Council, or Chamber, or House of Princes, are open to criticism. There is much to be said in favour of an Indian name for an Indian body which, from the circumstances of the case, would exist nowhere else; but it would be necessary to choose one not peculiarly associated historically either with Hindus or with Mahomedans. While therefore we have adopted the term Council for temporary purposes we hope that discussion may produce some happier alternative.

307. It has been represented to us that difficulties have occurred in the past by reason of the fact that the Political Department comes to decisions affecting the Native States without being in a position to avail itself of the advice of those who are

in a position to know from their personal experience or the history of their States the right course to pursue. On matters of customs and usage in particular we feel that such advice would be of great value and would help to ensure sound decisions. Our second proposal therefore is that the Council of Princes should be invited annually to appoint a small standing committee, to which the Viceroy or the Political Department might refer such matters. We need hardly say that no reference affecting any individual State would be made to the committee without the concurrence of its Ruler. The Council of Princes might appoint to the standing committee not only Princes but also Dewans or Ministers, who were willing to place their services at the disposal of the Viceroy when called upon for advice. This machinery is based on the principle of consultation which in so many matters underlies our recommendations in regard to British India.

Standing
Committee
of Council
of Princes

308. Our next proposal is concerned with disputes which may arise between two or more States, or between a State and a Local Government or the Government of India, and with a situation caused when a State is dissatisfied with the ruling of the Government of India or the advice of any of its local representatives. In such cases there exists at the present moment no satisfactory methods of obtaining an exhaustive and judicial inquiry into the issues such as might satisfy the States, particularly in cases where the Government of India itself is involved, that the issues have been considered in an independent and impartial manner. Whenever, therefore, in such cases the Viceroy felt that such an inquiry was desirable we recommend that he should appoint a commission, on which both parties would be represented, to inquire into the matter in dispute and to report its conclusions to him. If the Viceroy were unable to accept the finding the matter would be referred for decision by the Secretary of State. The commission that we have in mind would be composed of a judicial officer of rank not lower than a

Commis-
sions of
inquiry
into dis-
putes

High Court judge and one nominee of each of the parties concerned.

Commissions of inquiry into misconduct of Princes

309. In another class of cases we have a similar proposal to make. It has happened, and we conceive that it may happen though rarely in the future, that the question arises of depriving a Ruler of a State of his rights, dignities, and powers or of debarring from succession a member of his family. If such cases occur in the future we think that they should be always referred to a commission to be appointed by the Viceroy to advise him. It should consist of five members, including ordinarily a High Court judge and two Ruling Princes. The names of the commissioners should be intimated in advance to the defendant before they were appointed; and the proceedings of the commission should be made public only if the defendant so desired.

"All important States should be placed in direct political relations with the Government of India."

Existing system

310. Our two remaining proposals bear a direct relation to our constitutional scheme for British India. We recommend that as a general principle all important States should be placed in direct political relations with the Government of India. We feel that the necessity of communicating with the Central Government through two, or even more, intermediaries is an obstruction to good understanding and a great obstacle to business. The present position is that while four large States and one small State deal directly with the Government of India through their Resident, there are in the Central India Agency some 150 States and in the Rajputana Agency some 20 States and in Beluchistan 2 States under the Agents to the Governor-General. The remaining States are in political relations with Local Governments. Madras deals with 5 States; Bombay with over 350; Bengal with 2; the United Provinces with 3; the Punjab with 34; Burma with 52; Bihar and Orissa with 26; the Central Provinces with 15; and Assam with 16. We have already laid stress in our report upon the need in domestic affairs for dividing matters of all-Indian, from those of provincial, concern. Now on general grounds the

relations between the States and the Government are clearly a matter for the Central Government; and where this principle has been departed from it has been on grounds of history or convenience. It seems to us that the changing conditions of the time afford strong reason for affirming the principle, both because the institution of a Council of Princes will give greater solidarity to the views of the States, and also because the growth of responsibility in Provincial Governments will to some extent unfit them to act in political matters as mere agents for the Government of India. There will, we recognise, be difficulty in some cases where the territories of the States and British provinces intersect, but such obstacles are not insurmountable. As a general principle, therefore, we recommend that all important States should be placed in direct political relations with the Central Government. We do not intend, of course, that the Durbars should write direct to the Political Secretary, but that there should, wherever possible, be only one political officer through whom the State would correspond with the Government of India. This is already the case with the States of Hyderabad, Baroda, Mysore and Kashmir. In other cases, it will be necessary to revise the existing arrangements by which correspondence passes through a local Political Agent or Resident to an Agent to the Governor-General or a Local Government and thence to the Government of India. Where the authority immediately subordinate to the Government of India is an Agent to the Governor-General the choice lies generally between abolishing the offices of local Political Agents or Residents, while transferring their functions to the Agent to the Governor-General, with an increased staff of assistants, and abolishing the post of Agent to the Governor-General, while retaining Residents accredited to States or groups of States. In other cases, instead of abolishing either the Agent to the Governor-General or the Resident, where both officers exist, the Residents of particular States might be allowed to communicate direct with the Government of India, sending a copy

On principle "the relations between the States and the Government are clearly a matter for the Central Government".

Suggested changes

of such communications to the Agent to the Governor-General for his information. The future position of other States which are now in relation with Provincial Governments cannot be determined immediately since both the wishes of the Durbars, and also the administrative advantages, must be considered. It may be that the Government of India will assume direct relations with these States, or that they may be left for the time being in relation with the Provincial Governments; but in the latter case it seems to us that the head of the province should in each case act in his relations with the States as agent for the Central Government, and that relations with the Native States should not be matters of provincial concern in the sense that they are intended ever to be transferred to the control of the Legislative Council.

**Joint
deliberation
on matters
of common
interest**

311. Our last proposal is intended to provide some means of deliberation between the Government of India and the Princes on matters of common interest to both, and so to ensure that as far as possible decisions affecting India as a whole shall be reached after the views of the Durbars have been taken into account. In the past it certainly has occasionally happened that the States were vitally affected by decisions taken without reference to them; and yet no machinery for such collective consultation with them has hitherto existed. It seems to us that they have a clear right to ask for it in the future. We have abandoned for the present all considerations of suggestions that the Ruling Princes, or some representatives of their Order, should be members of the Council of State. Not only would this at the present stage infringe the doctrine of non-interference on the part of the Princes in the affairs of British India, but we are satisfied that few, if any, of the Princes themselves are ready for such a step. On the other hand, it seems to us that, when a Council of Princes has been established, and when a Council of State and a Privy Council have been created, the machinery will exist for bringing the senatorial institutions of

**Doctrine of
non-inter-
ference of
Princes in
affairs of
British
India**

British India into closer relations when necessary with the Rulers of the Native States. Matters affecting the Native States generally, or the Native States and British India in common, or the Empire might, as we have seen, be referred to the Council of Princes. It would thus be possible for the Viceroy, when he thought fit, to arrange for joint deliberation and discussion between the Council of State and the Council of Princes or between representatives of each body. He might also invite members of the Council of Princes to serve on committees of the Privy Council.

Suggested
procedure
for joint
deliberation

312. With these indications of the position to be occupied by the Native States in future we may rest content. We believe that the trend of events must draw them still closer into the orbit of the Empire; we think that the process need give rise to no alarm lest their internal autonomy be threatened. We need not conceal our conviction that the processes at work in British India cannot leave the States untouched and must in time affect even those whose ideas and institutions are of the most conservative and feudal character. But in that respect there can be no intention or desire to accelerate growth by artificial means. We believe that our proposals will afford satisfaction to the progressive Rulers while respecting the legitimate desire of those less advanced to go forward at their own pace.

"Processes
at work in
British
India
cannot
leave the
States
untouched."

59. LORD READING'S LETTER TO THE NIZAM, 1926. (March 27, 1926).

In the paragraphs¹ which I have mentioned you state and develop the position that in respect of the internal affairs of Hyderabad, you, as Ruler of the Hyderabad State, stand on the same footing as the British Government in India in respect of the internal affairs of British India. Lest I should be thought to overstate your claims, I quote Your Exalted Highness's own words: "Save and except matters

Nizam's
claim of
complete
freedom in
respect of
internal
affairs

¹ The reference is to the Nizam's letter dated September 26, 1925.

**Nizam's
view :
Question of
Berar does
not involve
'foreign
powers and
policies'.**

relating to foreign powers and policies, the Nizams of Hyderabad have been independent in the internal affairs of their State just as much as the British Government in British India. With the reservation mentioned by me, the two parties have on all occasions acted with complete freedom and independence in all inter-Governmental questions that naturally arise from time to time between neighbours. Now, the Berar question is not and cannot be covered by that reservation. No foreign power or policy is concerned or involved in its examination, and thus the subject comes to be a controversy between the two Governments that stand on the same plane without any limitations of subordination of one to the other".

These words would seem to indicate a misconception of Your Exalted Highness's relations to the Paramount Power, which it is incumbent on me as His Imperial Majesty's representative to remove, since my silence on such a subject now might hereafter be interpreted as acquiescence in the propositions which you have enunciated.

**Nature and
basis of the
supremacy
of the
British
Crown in
India**

The Sovereignty of the British Crown is supreme in India, and therefore no Ruler of an Indian State can justifiably claim to negotiate with the British Government on an equal footing. Its supremacy is not based only upon treaties and engagements, but exists independently of them and, quite apart from its prerogative in matters relating to foreign powers and policies, it is the right and duty of the British Government, while scrupulously respecting all treaties and engagements with the Indian States, to preserve peace and good order throughout India. The consequences that follow are so well-known and so clearly apply no less to Your Exalted Highness than to other Rulers, that it seems hardly necessary to point them out. But if illustrations are necessary, I would remind Your Exalted Highness that the Ruler of Hyderabad along with other Rulers received in 1862 a *Sanad* declaratory of the British Government's desire for the perpetuation of his House and Government, subject to continued loyalty to the Crown; that

**British
control over
succession
in Indian
States**

no succession in the *Masnad* of Hyderabad is valid unless it is recognised by His Majesty the King-Emperor; and that the British Government is the only arbiter in cases of disputed succession.

The right of the British Government to intervene in the internal affairs of Indian States is another instance of the consequences necessarily involved in the supremacy of the British Crown. The British Government have indeed shown again and again that they have no desire to exercise this right without grave reason. But the internal, no less than the external, security which the Ruling Princes enjoy is due ultimately to the protecting power of the British Government, and where Imperial interests are concerned, or the general welfare of the people of a State is seriously and grievously affected by the action of its Government, it is with the Paramount Power that the ultimate responsibility of taking remedial action, if necessary, must lie. The varying degrees of internal sovereignty which the Rulers enjoy are all subject to the due exercise by the Paramount Power of this responsibility. Other illustrations could be added no less inconsistent than the foregoing with the suggestion that, except in matters relating to foreign powers and policies, the Government of Your Exalted Highness and the British Government stand on a plane of equality. But I do not think I need pursue the subject further. I will merely add that the title "Faithful Ally" which Your Exalted Highness enjoys has not the effect of putting Your Government in a category separate from that of other States under the paramouncy of the British Crown.

**Right of
British
Government
to intervene
in internal
affairs of
Indian
States**

**Meaning of
the term
"Faithful
Ally"**

In pursuance of your present conception of the relations between Hyderabad and the Paramount Power, you further urged that I have misdescribed the conclusion at which His Majesty's Government have arrived as a "decision" and that the doctrine of *res judicata* has been misapplied to matters in controversy between Hyderabad and the Government of India.

**Right of
Paramount
Power to
pronounce
"decisions"
in disputes
with Indian
States**

I regret that I cannot accept Your Exalted Highness's view that the orders of the Secretary of State on your representation do not amount to a decision. It is the right and privilege of the Paramount Power to decide all disputes that may arise between States, or between one of the States and itself, and even though a Court of Arbitration may be appointed in certain cases, its function is merely to offer independent advice to the Government of India, with whom the decision rests. I need not remind you that this position has been accepted by the general body of the Indian Rulers as a result of their deliberations on paragraph 308 of the Montagu-Chelmsford Report. As regards the use of the term *res judicata*, I am, of course, aware that the Government of India is not, like a Civil Court, precluded from taking cognizance of a matter which has already formed the subject of a decision, but the legal principle of *res judicata* is based on sound practical considerations, and it is obviously undesirable that a matter which has once been decided should form the subject of repeated controversies between the same parties.

Res judicata

Question of appointment of a Commission for enquiry into the Berar case

I now pass on to consider your request for the appointment of a Commission to enquire into the Berar case and submit a report. As Your Exalted Highness is aware, the Government of India not long ago made definite provision for the appointment of a Court of Arbitration in cases where a State is dissatisfied with a ruling given by the Government of India. If, however, you will refer to the document embodying the new arrangement, you will find that there is no provision for the appointment of a Court of Arbitration in any case which has been decided by His Majesty's Government, and I cannot conceive that a case like the present one, where a long controversy has been terminated by an agreement executed after full consideration and couched in terms which are free from ambiguity, would be a suitable one for submission to arbitration.

In accordance with Your Exalted Highness's request, your present letter has been submitted to

His Majesty's Secretary of State, and this letter of mine in reply carries with it his authority as well as that of the Government of India.

60. CONSTITUTIONAL IMPORTANCE OF THE CHAMBER OF PRINCES.

1. Extracts from Report of Simon Commission.

107. Various proposals had been made before the Montagu-Chelmsford Report to organise a system of conferences amongst the Ruling Princes of India with a view both of securing the expression of their collective opinion and of providing opportunities for counsel and consultation in matters of common concern to India as a whole. But it was not until after the publication of the Joint Report that the idea took permanent and effective shape. It is not, of course, to the Government of India Act that we must turn to find the institution of the Chamber of Princes; indeed we are not aware of any specific reference to the Indian States in the Act, though in many places "India" is referred to as distinguished from British India¹. It was by Royal Proclamation that the Chamber of Princes was set up on 8th February, 1921. The ceremony of inauguration was performed, on behalf of the King-Emperor, by the Duke of Connaught in the Dewani-Am of the Moghul Palace in Delhi. The Proclamation which was read on this occasion contained the memorable passage :—

"In my former Proclamation I repeated the assurance given on many occasions by my Royal Predecessors and Myself, of My determination ever to maintain unimpaired the privileges, rights, and dignities of the Princes of India. The Princes may rest assured that this pledge remains inviolate and inviolable".

1 "India" is defined in the Interpretation Act as meaning "British India together with any territories of any Native Princes or Chiefs under the suzerainty of His Majesty exercised through the Governor-General of India or through any Governor or other officer subordinate to the Governor-General of India."

**Composition
of Chamber
of Princes**

108. The Chamber of Princes contains, in the first place, 108 Rulers of States who are members in their own right. They are Ruling Princes who enjoy permanent dynastic salutes of eleven guns or over, together with other Rulers of States who exercise such full or practically full internal powers as, in the opinion of the Viceroy, qualify them for individual admission to the Chamber. In the second place, the Chamber includes twelve additional members elected by the Rulers of 127 other States not included in the above. These representative members are chosen from among these Ruling Chiefs by a system of group voting. The Viceroy is the President of the Chamber and a Chancellor and a Pro-Chancellor are elected from among the members annually. An extremely important organ of the Chamber is its Standing Committee which consists of seven members including the Chancellor and Pro-Chancellor. The functions of the Standing Committee are to advise the Viceroy on questions referred to the Committee by him "and to propose for his consideration other questions affecting Indian States generally or which are of concern either to the States as a whole or to British India and the States in common".

**Standing
Committee****Powers of
Chamber of
Princes**

109. The Chamber of Princes is a deliberative, consultative and advisory, but not an executive, body. It meets annually in its own Hall of Debate in the magnificent Council House which has recently been completed at New Delhi. Two important provisions in its constitution must be set out *verbatim* :—

**Two
important
restrictions**

"Treaties and internal affairs of individual States, rights and interests, dignities and powers, privileges and prerogatives of individual Princes and Chiefs, their States and the members of their families and the actions of individual Rulers shall not be discussed in the Chamber."

"The institution of the Chamber shall not prejudice in any way the engagements or the relations of any State with the Viceroy or Governor-General (including the right of direct correspondence) nor shall any recommendation of the Chamber in any

way prejudice the rights or restrict the freedom of action of any State".

The latter of these provisions makes plain that the establishment of the Chamber of Princes has not affected the individual relations between any Indian State and the representative of the Crown. The Viceroy is himself in charge of the Political Department of the Government of India, and this is the department which deals with matters affecting the Indian States. Following upon the recommendations of the Montagu-Chelmsford Report¹, most of the important States are now placed in direct political relations with the Central Government and this has involved the transfer, in a large number of cases, of States' relations from a Provincial Government to the Government of India. There are, however, some States that are not in direct relations with the Governor-General in Council but with the Governors in Council. Most of the important Rulers have and frequently exercise the right of direct access to and correspondence with the Viceroy. The Political Department of the Government of India is manned by officers, for the most part British, selected from the Indian Civil Service and the Indian Army. Political officers are accredited as individual Residents to the greater States. In each of the Agencies, namely, Rajputana, Central India, the Punjab States, the Western India States, the Madras States and Baluchistan there is an Agent to the Governor-General with a staff of officers, many of whom are accredited to particular States or groups of States. At the head of the Political Department is the Political Secretary who is the Viceroy's immediate adviser in affairs concerning the States.

Direct
relations
between
States and
Central
Government

How rela-
tions with
States are
conducted

110. The establishment of the Chamber of Princes marks an important stage in the development of relations between the Crown and the States, for it involves a definite breach in an earlier principle of policy according to which it was rather the aim of the Crown to discourage joint action and joint con-

Old policy
of keeping
the States
in isolation
given up by
the Govern-
ment of
India

¹ Para 310—See Document No. 58.

Work done
by the
Chamber

sultation between the Indian States and to treat each State as an isolated unit apart from its neighbours. That principle, indeed, had already been giving place to the idea of conference and co-operation amongst the Ruling Princes of India, but this later conception was not embodied in permanent shape until the Chamber of Princes was established. The Chamber has enabled free interchange of views to take place on weighty matters concerning the relationship of the States with the Crown and concerning other points of contact with British India. Notwithstanding that some States of great importance, like Hyderabad and Mysore, have stood aloof, its work during the last nine years—especially, perhaps, the work of its Standing Committee—proves that the time was ripe for advance. But this advance does not as yet cross the boundary which must be traversed before the first actual step on the road of All-India Federation can be taken.

We conclude this chapter by a quotation which postulates the necessary condition of further progress in this direction.

Lord
Irwin's
view on
treaty rights
of Princes

"I make no secret of my view", said Lord Irwin in June, 1929, "that in any proposals that may be made it is essential, on every ground of policy and equity, to carry the free assent of the Ruling Princes of India, and that any suggestion that the treaty rights which the Princes are accustomed to regard as sacrosanct, can be lightly set aside is only calculated to postpone the solution that we seek".

II. Extracts from Report of Butler Committee.

Limitations
of the
Chamber

The Chamber of Princes was set up by the Crown by Royal Proclamation on the 8th February, 1921 The Chamber and its Standing Committee may not as yet have fulfilled all the expectations formed of them; their decisions do not bind the Princes as a body, or individually; and their proceedings are not held in public; some of the more important Princes have hitherto refused to attend meetings of the Chamber the Nizam has always adopt-

ed an attitude of entire detachment from it
 But nevertheless the constitution of the Chamber and its Standing Committee was a great and far-reaching event. It meant that the Paramount Power had once and for all abandoned the old policy of isolating the States and that it welcomed their co-operation.

61. THE NEHRU REPORT ON THE INDIAN STATES, 1928.

.....We are aware that the sensitiveness of some Indian Princes has in recent years been touched by what they consider to be a somewhat obtrusive interest taken in them by public opinion in British India, which they have condemned as either lacking in knowledge, or political sagacity or sympathy. We, therefore, very strongly repudiate the ill-founded charge that intelligent public opinion in British India has been too self-centred to look beyond the confines of British India or has shown any unwillingness to understand the viewpoint of the Indian Princes or their subjects or even to sympathise with it wherever and whenever it has been possible to extend sympathy. If it has at times been critical of some of the "claims" of the Indian princes, or if it has at times approached their internal problems or tried to envisage the development of the constitutional relations between them and the future self-governing India from a different angle of vision, it is no more than what it is clearly entitled to do. We are afraid that the present tendency to stress the problem of Indian States as presenting insurmountable obstacles in the way of British India achieving Dominion Status is full of incalculable mischief for both and instead of helping to bring the "two Indias" closer to each other is likely to give rise to serious misunderstanding.

Indian
States and
intelligent
public
opinion
in British
India

While the fact that there is an "Indian India" consisting of these States—some almost as big as, if not bigger than, some of the countries of Europe—enjoying, in a way, 'internal sovereignty', 'autonomy' and 'Independence', dignities and status—may be

**Affinities
between
States and
British
India**

**States
cannot
remain
isolated
from British
India.**

and has to be freely admitted, we think it would be very poor statesmanship and short-sighted policy to ignore those obvious historical, religious, sociological and economic affinities which exist between the people of British India and the people of these States. Nor do we think that it is possible to erect artificial geographical barriers between the two. Ideas and opinions travel from one part of India to another much more rapidly than was the case 60 or 70 years ago, and it would be absurd to deal with the problem of Indian States on the assumption that the dynamic forces now in operation in British India can for a very long period of time be expected to spend themselves on the borders of British India. It is inconceivable that the people of the States, who are fired by the same ambitions and aspirations as the people of British India, will quietly submit to existing conditions for ever, or that the people of British India, bound by the closest ties of family, race and religion to their brethren on the other side of an imaginary line, will never make common cause with them. In dealing with the problem, therefore, we would much rather base our conclusions upon the community of interests than upon differences of form. This community of interests would clearly point to joint action by the parties concerned as the most natural course to adopt with a view to mutual protection and advancement. Indeed if there ever was a case for a round table conference at which a perfect understanding could easily be reached it was this. With the representatives of the princes, of their people, of the British Government and of the people of British India assembled at such a conference all difficulties could have been solved with mutual goodwill. But most of the princes have unfortunately chosen to ignore the two most important parties—their own people and the people of British India—and have asked for or acquiesced in the appointment of the Butler Committee which, apart from the absence of necessary parties, is precluded by its very terms of reference, as we read them, from dealing with the constitutional issue. This commit-

is sitting in camera but such information as is available from published statements leaves no doubt in our minds that an attempt is being made to convert the Indian States into an Indian Ulster by pressing constitutional theories into service.

States to be
made an
'Indian
Ulster'

* * * *

The constitutional position at the present moment, notwithstanding some vagueness that may surround it, is by no means difficult to understand. It is claimed that according to true constitutional theory the Indian States are and have been in relation with the Crown, whether their treaties were with the East India Company or the British Crown, or whether they have been entered into since 1858 with the Government of India. Now it is obvious that the Crown under the constitution does not mean the King alone. It is a convenient constitutional phrase used to indicate the King-in-Parliament. Before 1858, the East India Company exercised sovereign rights, under powers delegated by the 'Crown', and since 1858 those powers have been exercised under delegated authority by the Government of India and the Secretary of State who is an integral part of the machinery established by Parliament for the government of India. Section 67 of the Act of 1858 provided that "all treaties made by the said Company shall be binding on Her Majesty" and similarly Section 132 of the Act now in force provides that "all treaties made by the East India Company, so far as they are in force at the commencement of this Act, are binding on His Majesty." In point of fact, the enforcement of those treaties, the fulfilment of the obligations created by those treaties and the interpretation of those treaties, have hitherto been among the normal functions and duties of the Government of India, subject to a so-called 'appellate' or supervisory jurisdiction of the Secretary of State for India. It is inconceivable that any Indian prince could, under the present constitution, ignore the Government of India or the Secretary of State and take up any matter relating to such obligations to the King or to His Majesty's Government. Again, the

Meaning of
the term
'Crown'

Government
of India and
Secretary of
State
regulate
treaty
relations
with States.

**Foreign
Jurisdiction
Act**

fact is that the Government of India have acquired certain powers by mere practice, usage or convention which are outside the scope of the written treaties. The Foreign Jurisdiction Act XXI of 1879 has no oftentimes been resorted to by the Government of India for the extension of their jurisdiction.

**Deposition,
suspension,
etc. of
Princes by
Government
of India**

By the resolution dated the 29th of October 1920, the Government of India have given effect to the recommendations contained in paragraph 309 of the Report on Indian Constitutional Reforms¹ which prescribed a procedure for dealing with cases in which "the question arises of depriving the ruler of an important State, temporarily or permanently, of any of the rights, dignities, powers or privileges to which he, as a ruler, is entitled or debarring from succession the heir apparent or any other member of the family of such ruler who according to the law and custom of his State is entitled to succeed."

**Lord
Reading's
letter to the
Nizam**

In his letter dated the 27th March, 1926, Lord Reading emphasised the constitutional position as follows:—(a) The sovereignty of the British Crown is supreme in India, and therefore no ruler of an Indian State can justifiably claim to negotiate with the British Government on an equal footing. Its supremacy is not based only upon treaties and engagements, but exists independently of them, and quite apart from its prerogative in matters relating to foreign powers and policies, it is the right and duty of the British Government, while scrupulously respecting all treaties and engagements, to preserve peace and good order throughout India. (b) The right of the British Government to intervene in the internal affairs of the Indian States is another instance of the consequences necessarily involved in the supremacy of the British Crown. (c) The varying degrees of internal sovereignty which the rulers enjoy are all subject to the exercise by the paramount power of this responsibility.

**Claims of
the Para-
mount
Power**

It is a matter of common knowledge that the exercise of these large powers, or to be more accu-

• 1 See Document No. 58.

late, the decision of the Government of India to exercise these powers in the case of some princes in recent years,¹ has been the subject of much comment and dissatisfaction, and the exposition of the constitutional position in Lord Reading's letter to His Exalted Highness the Nizam, from which we have quoted above, has led since to much searching of heart. It is not our intention or purpose to discuss the merits of the claim put forward in that letter. We simply desire to draw attention to it to show that even these large powers can only be exercised at the discretion, upon the initiative and by the machinery of the Government of India.

By usage or convention, or as a necessary corollary to the paramountcy of British power, the Government of India have claimed and exercised the right of (a) "installing" princes on the *gaddis*, (b) administering the States during the minority of the ruler, (c) settling disputes between rulers and their *jagirdars* and (d) interfering in cases of gross misrule. With any legitimate desire on the part of the Indian princes to get their grievances in these respects remedied, it is possible even for democratic India to sympathise; and we feel that it is by no means impossible or impracticable to define the limits within which the Government of India, as it is constituted at present, or as it may be in future, may seek to interfere. We think however that the plain fact ought not to be overlooked that the Government of India as a Dominion will be as much the King's Government, as the present Government of India is, and that there is no constitutional objection to the Dominion Government of India stepping into the shoes of the present Government of India.

If there are personal ties of allegiance or devotion which bind the Indian princes to the throne, person or dynasty of the King, they cannot, and ought not, to

1 For instance, we may refer to the Manipur Case (1891), the Udaipur Case (1921) and the Nabha Case (1928). See Sir William Lee-Warner, *The Native States of India* (pp. 179-183) and K. M. Panikkar, *Relations of Indian States to the Government of India* (pp. 54-70).

**Personal
allegiance
of Princes
to the
Crown**

suffer in strength by change or modification in the composition of the King's Government in India, when India attains Dominion Status. There will always be plenty of room for the discharge of those duties to the Crown and for the exercise on the part of the Crown of those prerogatives which may be inseparable from the personal relation that might have subsisted between the Crown and the Indian rulers.

**View of
Sir Leslie
Scott**

We shall now turn to the latest contribution on the subject. It comes from no less an authority than Sir Leslie Scott, the learned counsel engaged by the princes, who has expressed his views in a letter which has been printed in the July number of the "Law Quarterly Review." We recognise his eminence as a lawyer, but we cannot help feeling that his views as a counsel for the Indian princes have yet to be tested by an independent judicial or legal authority after having both sides of the question presented to it. So far as we are concerned we venture to differ from him entirely. After laying down that the relationship between the Crown and the Indian States cannot be governed either by international or municipal law, Sir Leslie Scott asks, "To what system of legal principles then are the relations of an Indian State to the Crown referable? There is no legal decision to serve as precedent, no complete analogy to guide. Resort must be had to first principles of law. We must think things out for ourselves. It is almost a virgin field for the lawyer." Even if it is a virgin field for the lawyer, and we venture to say this is not quite correct, we think it is more a case for the constructive statesman than for the analytical lawyer. Sir Leslie Scott has in this letter stated five definite propositions, some of which may be admitted to be correct, others of which strike us as being too broadly put. In any case the conclusion which is sought to be drawn from these propositions is of such far-reaching consequence that it may be taken as definitely certain that if the Indian princes decide to take their stand upon the position so ingeniously argued out for them, British

**Question
of States
demands
constructive
statesman-
ship, not
legal
analysis.**



India must substantially discount their profession of sympathy with its aspirations to Dominion Status, and treat their reference to the federation of India as no more than a vision, the realisation of which must be left to a remote and uncertain future.

Real attitude of Princes to political aspirations of British India

The first proposition of Sir Leslie Scott is that "the fundamental tie is consent and its recognition by Britain is unequivocal." This may be assumed to be true. It implies nothing more than what can be said of any two states bound together by treaties or mutual understandings.

Criticism of Sir Leslie Scott's view on relations between Provinces and the Crown

The second proposition formulated by him is that "those contracts are between sovereigns—the Prince and the Crown—not the Company or the Government of British India." This proposition to our mind is untenable historically and legally, and in any case, whatever may be the true legal theory, actual practice shows that the Indian princes and States have dealt with the Government of India, and submitted to its rulings and decisions and intervention, and have never dealt with 'the Crown' or His Majesty's Government. The fact that there may be personal relationship between His Majesty and an Indian prince does not in our opinion alter or affect the real legal position or the interpretation of that legal position in actual practice.

The third proposition is "that the relationship is wholly legal—a nexus of mutual rights and obligations. It is in no sense arbitrary." We should have thought that one of the main grievances of the Indian princes was that the Government of India had in actual practice extended their jurisdiction over them by going beyond the legal relationship in an 'arbitrary' manner. If they are protesting against the 'arbitrary' extension of such jurisdiction, it is in our opinion an understandable position, but it is somewhat remarkable that the importance of this proposition in the setting in which it is stated lies not so much in its practical application in the present, as in relation to possible constitutional developments in British India.

Is the relationship between Crown and Princes legal or arbitrary?

Can the Crown assign its contracts with the Princes to a third party?

The fourth proposition is that the princes in making these contracts gave their confidence to the British Crown and nation; and the Crown cannot assign the contracts to any third party. "The British Government as paramount power has undertaken the defence of all the States and therefore to remain in India with whatever military and naval forces may be requisite to enable it to discharge that obligation." It cannot hand over these forces to any other Government—to a foreign power such as France or Japan; to a Dominion Government such as Canada or Australia; nor even to British India.¹ (our italics).

Sir Leslie Scott's view implies the perpetual division of India.

Sir Leslie Scott ignores facts in building up theories.

The necessary corollary to this is stated in the fifth proposition, viz., that "The Crown can normally choose its agents. But an agent cannot act when his interest may conflict with his duty. In all matters of common concern with the States—customs, railways, ports, the salt monopoly, etc.—there is always the possibility that the interest of British India may not be identical with the interest of a particular State. The Crown's duty is, or may be, to safeguard the interest of the State—particularly in case of a minority administration. Should the interest of the agent be given the chance of conflicting with the duty of the principal?" This if true is putting up an effective barrier against the progress of British India towards Dominion Status, now and for ever, for it is obvious that if these 'contracts' between the Indian princes and the British Crown and nation are of a personal character India must always continue to be divided between what is British India and Indian States, and the British nation must always maintain adequate military and naval forces to discharge its obligations to Indian States. The argument we venture to say does not appear to us as anything more than ingenious. It starts on a false analogy and in applying that analogy ignores the "hard facts" of the case. There is no

¹ See Dr. Ambedkar's statement, June 17, 1947. A. C. Banerjee, *The Making of the Indian Constitution*, pp. 485-496.

ground for the assumption that contracts between the princes and the Crown are on the same footing as contracts between private individuals. Sir Leslie Scott has himself pointed out in an earlier part of his letter that the princes continued to retain the attributes of sovereignty even after parting with some of its functions to the Crown. It is as such sovereigns that they must be taken to have dealt with another sovereign whether we take the latter to be the East India Company or the King in Parliament.

Again, it is not true to say that every contract between private individuals is of such a personal character as to be incapable of being performed by any one else. There is no question of one of the contracting parties having any special confidence in the other. The so-called contracts were made under stress of circumstances and would have been of the same or similar character with any other power if it occupied the same position as the British. The argument ignores the settled practice of the Government of India and, by invoking so-called first principles in determining the "legal relationship", it overlooks the hard and unchallengeable fact that from the early days of the Company it has been the Government of India and the Government of India alone which has dealt with Indian princes and Indian States. It introduces an element of "personal confidence" between them and the British nation which is not easy to understand. It suggests that the past and present Governments of India which have so far exercised the power, said to be delegated from the Crown, were and are acceptable to the Indian princes and Indian States; but that the future Government of India, if it is to be of the Dominion type, will not be so acceptable. This in plain English means that the past and present Governments of India were acceptable because they were essentially foreign in their composition and not responsible to the Indian electorate and that the future responsible Government of India would not be acceptable to the Indian princes because it will consist of their own country-

Historical
character
of contracts
between
States and
British
Crown

Question of transferring Crown's rights and duties to Government of free India

men and because it will be responsible to an electorate of their own countrymen. But supposing that this is so, is there any authority for the proposition that when a "contract" may be performed by an agent the choice of that agent does not rest with the principal but with the other party to the "contract?" We have shown that so far the "contract" has been performed by white agents to the apparent satisfaction of the brown princes. On what principle of law, we ask, may that "contract" not be performed by brown agents to the equal, if not greater, satisfaction of the brown princes?

Question of conflict between interests of States and those of Government of India

Let us now consider the argument that the principal cannot delegate to the agent the discharge of obligations where the agent's interest conflicts with his duty. Here again we find that the hard facts have been entirely ignored. The argument overlooks the fact that the agent of the Crown, viz., the present Government of India, has been regularly acting when its interest has conflicted with its duty, without any qualms of conscience on the part either of the principal or of the agent and without any public protest on the part of the Indian States. Sir Leslie Scott then says that when "the legal relationship" has been "made clear"—that is to say, according to his own conception of that relationship—"suitable constitutional machinery for harmonious working between the two sides of India can be devised, and the States have already made it clear that they are ready and willing to follow such a plan on reasonable lines." In other words, if Sir Leslie Scott's theory of personal relationship and personal confidence, and the consequent duty of the paramount power remaining in India to discharge its obligations is accepted, the princes would be ready and willing to fall in with British India on reasonable lines. Once this argument is accepted as sound it is obvious that whatever be the machinery devised for harmonious working between the Indian States and British India, Dominion Status for India must be ruled out for all time to come. We have shown that this argument is wholly unsound, and we

If Sir Leslie Scott's theory is acted upon, there will be no Dominion Status for India.

sincerely hope that legal ingenuity will not be allowed to prevail against the larger interests of the country, and that the patriotism and statesmanship of the Indian princes, aided by the growing patriotism and love of freedom among their subjects, will be concentrated more upon the establishment of practical machinery for the settlement of issues between them and a responsible Commonwealth of India than upon a determination of the theoretical question of legal relationship, which can do them no good and is fraught with mischievous possibilities which can only lead to disaster. Mutual relations can only be satisfactorily determined with mutual consent and we believe that there is still plenty of room for it. But we must sound a note of warning that the natural and the legitimate aspirations of India cannot and will not be allowed to be defeated or checkmated by ingenious arguments which have no application to facts as they are.

Political aspirations of India cannot be frustrated by Princes.

We take special note of the following passage in Sir Leslie Scott's letter:

"The political issues are of firstclass importance to the future of India as a whole. Their wise solution will affect directly the successful accomplishment by Sir John Simon and his colleagues of the task imposed by Parliament upon the Statutory Commission for British India. From an Imperial standpoint a statesmanlike treatment of the Princes now may well prove a vital factor in the future attitude of India towards the British Empire."

So that the findings of the Butler Committee arrived at in camera are to decide the fate of the people of British India without the latter being given a chance to be heard, and Sir John Simon and his colleagues, who are themselves not seized of these "political issues of first class importance," are to be guided by their "wise solution" by the Butler Committee if they are to accomplish successfully the task imposed by Parliament upon them. This was foreseen in India and openly declared from various platforms. We know now exactly what the Statutory

Will Butler Committee decide the future of British India under the guise of deciding the question of the States ? .

Commission is going to accomplish. The only wise solution of these issues suggested by Sir Leslie Scott is that the British Government must "remain in India with whatever military and naval forces may be requisite to enable it to discharge its obligations." We thank Sir Leslie Scott for this authoritative forecast of the recommendations of the Statutory Commission which fully justifies the attitude taken in regard to it by all the well-known parties in India.

It is with the Government of India that the States maintain direct contact.

Political Department of the Government of India

Leaving aside the theory of the relationship between the Crown and the Indian princes and coming to the position as it is, we maintain that we are right in saying that as a matter of fact and actual practice, it is with the Government of India that the Indian princes come into direct contact in regard to everything that concerns them or their States. It is well-known that the Political Secretary of the Government of India exercises vast powers over the Indian States. Without being a member of the Government of India, he practically discharges all the functions of a member, for there is no separate member in charge of the political portfolio, the political department being supposed to be in the direct charge of the Governor-General. The present position is that if the political department gives any decision against an Indian State or an Indian ruler, the only remedy available against it is an appeal, under certain conditions and subject to certain limitations, to the Secretary of State. We are aware that in the present circumstances this is supposed to be a valued right, but this is probably due to the very unsatisfactory procedure followed in the first instance in India. It is obvious that a right of appeal in a case which is not fairly tried is of little value and we think that it is possible to replace it by adequate constitutional provisions for the future.

Subjects of common interest between States and British India

In ordinary experience, the matters in regard to which the Indian States come into contact or conflict with the Government of India are those relating to customs, excise, extradition, railways, post offices, and ports or harbours. In addition to this, there is

the bigger common interest of self-defence. It is necessary for us to examine what are understood to be the grievances of the Indian States in regard to these matters. We simply note the fact that responsible Indian rulers and ministers of Indian States have, at times, raised their voice against what they have described to be the inequitable treatment which they received at the hands of the Government of India. How far those grievances are capable of being remedied, and how best they can be remedied are matters for investigation and joint consultation, but we venture to think that their solution is not inextricably mixed up with the continuance of the present constitution of the Government of India, or the establishment of an entirely separate and independent machinery for the exclusive treatment of these subjects. If we refrain from going into this question at greater length, it is only because the public have not hitherto been permitted to know enough of the scheme which has been in the course of incubation during the last few months. But if it is permissible to us to draw our own inferences from such statements as have been made in this connection by Sir Leslie Scott, the counsel for the Indian princes, before his departure for England, we shall sound a note of warning against the attempt that is being made to duplicate the machinery, by bringing into existence a separate Council for the Indian States to work with the Governor-General. Apart from the fact that it will be a cumbersome thing, its separate existence cannot secure the solution of matters of conflict with British India or with the future Commonwealth Government. It strikes us as being a vicious extension of the system of dyarchy with all its attendant incongruities, inconveniences, and constitutional difficulties.

How
grievances
of States
may be
remedied

Plan of
creating a
separate
Council for
Indian
States

A federation of some sort was foreshadowed by Sir Malcolm Hailey, . . . and there is no doubt that some such idea is also present to the mind of Sir Leslie Scott. But if the constitution of India is to be a federal one, as we think it might well be, the

Position of States in Indian Federation	position of the Indian States in relation to that federation appears to us to call for a definite determination and the ideas on the subject require to be cleared up. Are the Indian States willing and ready to join a real federation? We put this question as we believe that the lines on which the princes and Sir Leslie Scott are working cannot lead to any kind of federation in its well understood sense. "A federal state", says Professor Newton, "is a perpetual union of several sovereign states, based first upon a treaty between those States, or upon some historical status common to them all, and secondly, upon a
What is a Federation?	federal constitution accepted by their citizens. The Central Government acts not only upon the associated States but also directly upon their citizens. Both the internal and external sovereignty of the States is impaired and the federal union in most cases alone enters into international relations". It would be, in our opinion, a most one-sided arrangement if the Indian States desire to join the Federation, so as to influence, by their votes and otherwise, the policy and legislation of the Indian Legislature, without submitting themselves to common legislation passed by it. It would be a travesty of the federal idea. If the Indian States would be willing to join such a
Conditions under which Princes may join Federation	federation, after realizing the full implications of the federal idea, we shall heartily welcome their decision and do all that lies in our power to secure to them the full enjoyment of their rights and privileges. But it must be clearly borne in mind that it would necessitate, perhaps in varying degrees, a modification of the system of government and administration prevailing within their territories. We hope and trust that in the light of experience gained the Indian States may make up their mind to join formally the federation. Meanwhile we think that it is by no means impracticable to provide suitable machinery for the settlement of mutual differences on administrative and other matters. The practical question of the
Practical questions relating to States	preservation of their treaty rights and such independence as they have enjoyed or as they claim, is, in our opinion, far more important than the arid and

academic discussion of the question, whether in theory their relations are with the Government of India or with the Crown.

Accordingly, we have provided that (a) all treaties made between the East India Company and the Indian States and all such subsequent treaties, so far as they are in force at the commencement of this Act, shall be binding on the Commonwealth; (b) the Commonwealth shall exercise the same rights in relation to, and discharge the same obligations towards, the Indian States as the Government of India exercised and discharged previous to the passing of this Act. We have made these suggestions in no spirit of vanity or idealism. We fully realise their implications and the obligations that such provisions will impose upon the future Government of India. We do believe that the Government of India of the future will discharge their obligations in their integrity and with every desire to promote harmonious relations and no desire to override cherished privileges or sentiments. Similarly, in regard to matters of a justiciable character, we have suggested that in case of any difference between the Commonwealth and any Indian State on any matter arising out of treaties, engagements, sanads or similar other documents, the Governor-General in Council may, with the consent of the State concerned, refer the said matter to the Supreme Court for its decision. We think that this will be a far better method of settling such matters than the present arrangement under which the Government of India is both a party and a judge in a controversy between itself and an Indian State. We need scarcely point out that we anticipate that the judges of the Supreme Court will be men of the highest legal training, character and judicial independence.

In regard to non-justiciable matters involving financial and administrative relations, it should not be difficult to come to a settlement by mutual conferences and understandings. The position in the future will not, to our mind, be worse than it is.

Indeed it is likely to be better, where, between different States, there are honest differences and an independent effort is made to arrive at just and equitable settlements. Practical goodwill and larger common interest are of far greater value than any meticulous considerations of ultimate sanctions. It is obvious to our mind that the question of common defence is one which is bound to be in future the rallying centre of the Government of India and the Indian States, and if it has been possible in the past to sustain common obligations and to keep alive a common sense of duty to the country at large, we do not despair of the future.

62. JOINT OPINION OF THE PRINCES' LAWYERS¹, 1928.

(July 24, 1928).

(1) In the analysis of the relationship between the States and the Crown legal principles must be enunciated and applied.

**Partial
transfer of
sovereignty
by the
States to
the British
Crown**

(2) The Indian States to-day possess all original sovereign powers, except in so far as may have been transferred to the Crown.

(3) Such transfer has been effected by the consent of the States concerned, and in no other way.

(4) The consent of a State to transfer sovereign rights to the Crown is individual to that State, and the actual agreement made by the State must be investigated to see what rights and obligations have been created.

1 Five eminent English lawyers—Sir Leslie Scott, Mr. Stuart Bevan, Mr. Wilfrid A. Greene, Mr. Valentine Holmes and Mr. Donald Somervell—were appointed by the Princes "to advise on the legal and constitutional aspects of the questions raised by the terms of reference to the Indian States Committee" (i.e., the Butler Committee). This extract embodies their main conclusions. Keith says that the opinion of the Princes' lawyers 'exhibits unhappily singularly little sense of constitutional law'. (*Constitutional History of India*, pp. 292-293).

(5) Such agreement appears normally in a treaty or other formal engagement. An agreement to transfer sovereign powers is, however, capable in law of being made informally. In such case, the onus is on the transferee, viz., the Crown, to prove the agreement.

(6) The relationship of the Crown as Paramount Power and the States is one involving mutual rights and obligations. It rests upon agreement express or implied with each State and is the same with regard to all the States. Paramountcy gives to the Crown definite rights and imposes upon it definite duties in respect of certain matters and certain matters only, viz., those relating to foreign affairs and external and internal security. It does not confer upon the Crown any authority or discretion to do acts which are not necessary for the exercise of such rights, and the performance of such duties. Wherever "paramountcy" is mentioned in this opinion we mean paramountcy in the above sense and no other.

Meaning
of Para-
mountcy

(7) The relationship is between the States on the one hand and the British Crown on the other. The rights and obligations of the British Crown are of such a nature that they cannot be assigned to or performed by persons who are not under its control¹.

Rights of
the British
Crown
cannot be
transferred
to persons
who are not
under its
control.

63. THE INDIAN STATES AND THE BRITISH CROWN².

The first point raised by the Indian Princes is, that their relations are with His Majesty and not with the Government of India. This position, it appears, is based upon a statement contained in a

¹ For criticism of this view see G. N. Singh, *Indian States and British India*, Chapter II.

² These extracts are taken from *Memorandum of the Indian States' People*, (1923) submitted to the Butler Committee. The States' people were not allowed to represent their case before the Committee which formally took into consideration only the Princes' point of view.

Direct relations between States and the Crown

volume of the "British Empire Survey Series" written by Dr. Keith called 'The Constitution, Administration and the Laws of the Empire.' At page 250 Dr. Keith observes, "It is important to note that the relations of the Native States, however conducted, are essentially relations with the British Crown and not with the Indian Government and that this fact presents an essential complication as regards the establishment of responsible government in India. It is clear that it is not possible for the Crown to transfer its rights under a treaty without the assent of the Native States to the Government of India under responsible Government".

Keith's view

Keith's view not supported by history

This statement has since then been repeated by reactionary bureaucrats and by the supporters of autocracy. We are aware that this statement of Dr. Keith forms the main prop for the theory of direct relations of which we have been hearing so much recently. We, however, maintain that the position as defined by him does not seem to be borne out by Indian history. So far as this subject is concerned the history of the Indian States can be split up into three periods :—(1) from the granting of the Charter to the East India Company to the passing of the Regulating Act, 1773, (2) from 1773 to 1858 when the government of India was transferred to the Crown, and (3) the period since 1858 up to the present time. We propose to examine who conducted and controlled the relations of the Indian States during these periods.

First period (1600-1773)

Let us for the moment confine our attention to the first of these three periods Under the authority of the Charter they (i.e., the Directors of the Company) touched the Indian States and dealt with them as a sovereign power would do. In their dealings with the States the Crown of England either in its individual capacity or as the head of Parliamentary Government did not in the least interfere; and it was for this reason that the Company virtually

made and unmade Nawabs and Princes, humbled great Rulers of Indian States, braved even the Emperor of Hindustan. In fact, as remarked by Lord Macaulay, "It was considered necessary both by Lord Clive and by Warren Hastings to leave the Charter of the Company thus undefined in order that the English might treat the Princes in whose names they governed as entities or non-entities. just as might be most convenient". The pertinent point is, that during this first period the Indian States had absolutely no direct relations with the Crown, that treaties with them were not concluded after any consultation, sanction or ratification of the Crown; in fact, in the internal affairs of the Company the Crown did not at all interfere.

**East India
Company
and the
States**

. (During the second period) the East India Company, through its Court of Directors and the Governors-General removable by the Court of Directors were solely responsible for establishing, shaping and controlling the relations of the Indian States. We have not heard anybody holding the Crown responsible for the policy of annexation, lapse and absorption of the Indian States into British dominions, and for the insult, humiliation and injury inflicted on Indian Princes during Lord Dalhousie's time. We, therefore, fail to see how the credit of the treaties and engagements concluded during this period can go to the Crown. The Crown as such even during the second period did not exercise any influence in the affairs of the Indian States. Although the Governor-General was a nominee of the Executive Government of England he acted on his own responsibility oftentimes disregarding the controlling powers of the double Government. But the Executive Government in England did not take any interest in the happenings in the Indian States. The Crown did not during this second period conclude any treaties or engagements directly with the Indian States; nor were any treaties and engagements sanctioned, confirmed or ratified by the Crown.

**Second
Period
(1773-1858)**

**No direct
relations
between
States and
the Crown**

**Third
period
(from 1858)**

The third period is marked by the transfer of the government of the East India Company from the double control of the Court of Directors and the Board of Control to the Crown

**Meaning of
"Crown"**

**Palmers-
ton's view**

There is considerable misunderstanding about the position of the Crown involved in this transfer. Many Indian Princes are under the belief that the government was transferred from the Company directly to the Crown. They believe, of course erroneously, that the Crown being represented in India in the person of the Viceroy, the Indian Princes are related to the Crown directly through the Viceroy. There is, however, no justification for thinking so. The government was not transferred to the Crown in the sense that it was delegated to the House of the Royal family of King George the Fifth but to the Crown which is a constitutional phrase for King in Parliament. "The government, therefore, through and in the name of the Crown, is to be carried on by Ministers, responsible to Parliament and to the public." The reason why the word "Crown" has been used in the phrase "Transfer to the Crown" has been given by Viscount Palmerston¹ in the following words: "I believe that there can be no doubt that, so far as the impression on the minds of the people of India is concerned, the name of the Sovereign of a great Empire like this must be far more respected, far more calculated to produce moral and political impressions than the name of the Company of merchants, however respectable and able they may be. We have to deal in that country with Princes, some ruling independently, some in a state of modified dependence upon us and with feudal Chiefs proud of their position, cherishing traditionary recollections of a wide empire and of great sovereigns to whom their ancestors owed allegiance. How can we expect them to feel any great respect for a mere Company of merchants? The respect they feel, the allegiance they yield, will increase ten-fold if one were given and the other tendered to the Sovereign of a great

¹ See *Indian Constitutional Documents*, Vol. II, pp. 1-9.

and mighty empire." This explanation explodes the fallacy under which the Indian Princes are labouring. It was to pander to their prejudices and to tickle their vanity that the word "Crown" has been inserted in the phrase "Transfer to the Crown". It is thus clear that "Crown" here means, not any individual sovereign or his dynasty but the political head of the constitutional Government of the United Kingdom. The political relations of the Indian States, therefore, are not with the House of King George V or with his person but with him as the political head of the United Kingdom.

Another important reservation which deserves to be clearly remembered in this connection is that allegiance to the sovereign and political relations with the sovereign do not mean one and the same thing. The learned authors of the *English Empire Digest* have authoritatively explained the position as follows:

"Now, seeing the King has but one person and several capacities, one political capacity for the realm of England, another for the realm of Scotland, it is necessary to consider to which capacity allegiance is due, and it was resolved that it was due to the natural person of the King (which is ever accompanied with the political capacity and the political capacity as it were appropriated to the natural capacity) and it is not due to the political capacity only, that is to his Crown or Kingdom distinct from his natural capacity". So far, therefore, as allegiance, homage, loyalty, reverence and affection are concerned, they are always due to the natural person of the King. But the question of political relations relates to His Majesty's political capacity. In this capacity the Sovereign acts through his Ministers who are responsible to Parliament. In the case of the Indian States, this legal sovereignty is exercised through the Secretary of State for India, he in his turn exercising it through the Governor-General in Council. The relations of the Indian Rulers, therefore, are directly with the Government of India, indirectly with the Secretary of State and only remotely with the Crown.

Distinction
between
King's
"natural
person"
and "politi-
cal capaci-
ty"

**Relations of
the States
are directly
with the
Government
of India.**

**Distinction
between
Viceroy and
Governor-
General**

The present cry of direct relations with the Crown seems to be mischievously raised with a view to snap asunder the political relations of the States with the Government of India. Further, it is well-known that the King can do no wrong, which means that for every act done by or in the name of the King a Minister is responsible. Similarly, whatever is done in the name of the Crown towards the Indian States must be supposed to be done by the Secretary of State for India, acting, if necessary, with advice of the Cabinet in England, which is entirely responsible to Parliament. When once this position is clearly understood, the distinction between a Viceroy and the Governor-General becomes obvious. As already pointed out, allegiance is due to the body or the person of His Majesty. On ceremonial or on State occasions this is shown to His Majesty's representative, the Viceroy. But as the human body of His Majesty is entirely distinct from his political body or his personal capacity from his political capacity as head of the administration, the Viceroy as representing His Majesty on ceremonial occasions is entirely distinct from the Governor-General who is a representative of the political capacity of the Crown. The Viceroy, therefore, has nothing to do with the political relations of the Indian States. Even the term 'Viceroy' is not recognised in the Constitution and is not used in the warrants of appointments now. This view is supported by Sir W. Hunter and Sir O'Moore Creagh.

* * * * *

**Section 20
of Act of
1858**

Another index that the Indian States are subordinate to the Government of India is supplied by Section 20 (of the Government of India Act, 1858), which provides that the revenues of India (not only of British India) shall be received for and in the name of His Majesty and shall, subject to the provisions of this Act, be applied for the purposes of the government of India alone. Section 20,3 (1) includes all tributes and other payments received from the Indian States. They are included in the revenues of the Government of India. This makes the position

entirely distinct and leaves no shadow of doubt that the relations of the Indian States are with the Government of India. If they had been with the British Crown directly, then the tributes, *Nazaranas*, etc., ought to have been received by the British Exchequer. Moreover, we find that the powers of the Central Legislature are limited as regards certain subjects. But the introduction of any measure affecting the relations of the Government with foreign Princes or States is permissible, if sanctioned by the Governor-General. Such a measure does not require the previous sanction, either of the Imperial Parliament or of the Secretary of State for India as some measures do, such as those mentioned in Section 65, sub-clause 2 and 3. If the Governor-General permits, such measures can be introduced and passed by the Central Legislature. This provision strengthens the inference that the Governor-General and the Government of India have the controlling power over the Indian States. It is further to be remembered that the Political Department, which exercises control over the Indian States, is employed by the Government of India and the expenditure for the same is incurred out of the British Indian Treasury and not out of the British Exchequer. The Government of India Act, therefore, makes it abundantly clear that the control of the Indian States rests with the Government of India, that the treaties are made binding on the Government of India, that the duty of maintaining peace and order is imposed on that Government, that the tributes are appropriated by the British Indian Government and that the Political Department is maintained at the cost of this Government and is controlled by and is subordinate to this Government of India. Section 67 of the Act of 1858 or Section 132 of the present Act (*i.e.*, Act of 1919) specifically lays down that all treaties made by the East India Company are binding on His Majesty. If really the treaties were concluded with the Crown

Power of
Governor-
General to
permit
legislation
regarding
States

Political
Department

Treaties

as is alleged by the Indian Princes this clause¹ was unnecessary and would never have been inserted. Treaties concluded with the Indian States prior to 1858 were with the East India Company and not with the Crown and treaties concluded with the Government of India were not with the Crown in its individual capacity, but were for the Crown, which is a constitutional phrase meaning King in Parliament, and concluded by the Governor-General under the statutory power given to him by Section 33 of the Act.

Powers of Governor-General

..... The control of defence of both British India and Indian States vests in the Governor-General and with the assistance of British Indian Army, he alone has the power to keep peace and order in the Indian States. The Governor-General is also the head of the Political Department which superintends, directs and controls all affairs of the Indian States. All treaties have also been made by or in the name of the Governor-General. Recognition of succession, minority administrations, settlement of inter-states disputes and corrective measures about removing misrule—all are undertaken by the Governor-General as the head of the Political Department. The Governor-General might or might not have consulted the Secretary of State for India or the constitutional advisers of the Crown, but that does not derogate from the position of the Government of India as the principal controlling power over the Indian States. And we find that in the case of all the States, whether treaty States or non-treaty States or even petty estates, it is the Government of India who have taken the initiative and also the final steps in all these matters. The abdication of Nabha, whether voluntary or otherwise, the voluntary abdication of Indore, the rebuff administered to the Nizam for his mal-administration, prove beyond a shadow of doubt, that the Indian States are subordinate to the Government of India who has taken the initiative and final responsibility in all these cases.

64. THE INDIAN STATES COMMITTEE' ON PARAMOUNTCY, 1929.

The 'Paramount Power' means the Crown acting through the Secretary of State for India and the Governor-General in Council who are responsible to the Parliament of Great Britain The Act of 1858 did not give the Crown any new powers which it had not previously possessed. It merely changed the machinery through which the Crown exercised its powers.

Meaning of
'Paramount
Power'

The fact of the Paramountcy of the Crown has been acted on and acquiesced in over a long period of time. It is based upon treaties, engagements and *sanads* supplemented by usage and sufferance and by decisions of the Government of India and the Secretary of State embodied in political practice.

Basis of
Paramount-
cy

* * * *

The validity of the treaties and engagements made with the Princes and the maintenance of their rights, privileges and dignities have been both asserted and observed by the Paramount Power. But the Paramount Power has had of necessity to make decisions and exercise the functions of paramountcy beyond the terms of the treaties in accordance with changing political, social and economic conditions. The process commenced almost as soon as the treaties were made In 1800 the British made a treaty with His Highness the Nizam, article 15 of which contains the following clause :

How the
Paramount
Power
extended its
authority

"The Honourable Company's Government on their part hereby declare that they have no manner of concern with any of His Highness' children, relations, subjects, or servants, with respect to whom His Highness is absolute."

British
relations
with the
Nizam

1 The Committee consisted of Sir Harcourt Butler, Mr. Sidney Peel and Professor Sir William Holdsworth. It was appointed by Lord Birkenhead, Secretary of State for India, in December, 1927. The *Report* was submitted to Lord Peel, Lord Birkenhead's successor, in February, 1929.

For the attitude of the Princes see the speech of the Maharaja of Patiala, in Panikkar, *The Indian Princes in Council*, Appendix II.

Yet so soon as 1804 the Indian Government successfully pressed the appointment of an individual as Chief Minister. In 1815 the same Government had to interfere because the Nizam's sons offered violent resistance to his orders The Indian Government was compelled again to intervene and in 1820 British officers were appointed to supervise the district administration Later on again the Court of Directors instructed the Indian Government to intimate to the Nizam through the Residency that they could not remain "indifferent spectators of the disorder and misrule" These are only some of the occasions of intervention. They are sufficient to show that from the earliest times there was intervention by the Paramount Power, in its own interests as responsible for the whole of India, in the interests of the States, and in the interests of the people of the States.

**Reaction
against
policy of
intervention**

From this policy of intervention there was in time a reaction. For some years before India passed under the direct government of the Crown, the doctrine of 'laissez faire' prevailed. The States were left alone and in the event of revolt, misrule, failure of heirs, etc., the Paramount Power stepped in with annexation. This policy was abandoned again after the Crown assumed the direct government of India. That great historical event, with its numerous implications, was thus described by Lord Canning

**Views of
Lord
Canning**

"The Crown of England," he said, "stands forth the unquestioned ruler and Paramount Power in all India, and is for the first time brought face to face with its feudatories. There is a reality in the suzerainty of the Sovereign of England which has never existed before and which is not only felt but eagerly acknowledged by the Chiefs."

Later in his despatch, dated the 30th April, 1860, Lord Canning laid down the two great principles which the British Government has followed ever since in dealing with the States : (1) That the integrity of the States should be preserved by perpe-

tuating the rule of the Princes whose power to adopt heirs was recognised by sanads granted in 1862 ; (2) That flagrant misgovernment must be prevented or arrested by timely exercise of intervention.

With this acceptance of the necessity of intervention modern political practice may be said to have begun. It received an extension from the development of a strong Political Department. Intervention reached its zenith during the viceroyalty of Lord Curzon

Revival of policy of intervention

The Paramount Power has defined its authority and right to interfere with no uncertain voice on several occasions, in the Baroda case (1873-75), the Manipur case (1891-92), and so lately as March 1926 in the letter of Lord Reading to the Nizam which carried the authority of His Majesty's Government

Instances of interference by the Paramount Power

* * * *

In the last ten years the Paramount Power has interfered actively in the administration of individual States in only eighteen cases. In nine of these interference was due to maladministration; in four to gross extravagance, or grave financial embarrassment. The remaining five cases were due to miscellaneous causes. In only three cases has the Ruler been deprived of his powers.

* * * *

We will now consider the relationship between the Paramount Power and the States in greater detail. In this we have the advantage of the opinion of eminent counsel on the legal and constitutional aspects of the questions raised by the terms of reference to us, an opinion placed before us by Sir Leslie Scott. With much of that opinion we find ourselves in agreement. We agree that the relationship of the States to the Paramount Power is a relationship to the Crown, that the treaties made with them are treaties made with the Crown, and that those treaties are of continuing and binding force as between the States which made them and the Crown. We agree

Opinion of the Princes' lawyers

The term
'treaty'
includes
engage-
ments and
Sanads.

that it is not correct to say that "the treaties 'with the Native States must be read as a whole', a doctrine to which there are obvious objections in theory and in fact. There are only forty States¹ with treaties but the term in this context covers engagements and *sanads*². The treaties were made with individual States, and although in certain matters of imperial concern some sort of uniform procedure is necessary, cases affecting individual States should be considered with reference to those States individually, their history and local circumstances and traditions, and the general necessities of the case as bearing upon them.

Criticism of
the opinion
of the
Princes'
lawyers

On the other hand we cannot agree with certain statements and arguments that occur in this opinion. The relationship of the Paramount Power with the States is not a merely contractual relationship, resting on treaties made more than a century ago. It is a living, growing, relationship shaped by circumstances and policy, resting, as Professor Westlake has said, on a mixture of history, theory and modern fact. The novel theory of a paramountcy agreement limited as in the legal opinion, is unsupported by evidence, is thoroughly undermined by the long list of grievances placed before us which admit a paramountcy extending beyond the sphere of any such agreement, and in any case can only rest upon the doctrine, which the learned authors of the opinion rightly condemn, that the treaties must be read as a whole. It is not in accordance

1 Rampur (1794), Mysore (1799, 1881, 1913), Hyderabad (1800, 1853), Alwar (1803), Gwalior (1804, 1844), Baroda (1805), Bharatpur (1805), Travancore (1805), Dholpur (1806), Cochin (1809), Kolhapur (1812), Rewa (1812), Orchha (1812), Sikim (1814), Kotah (1817), Karauli (1817), Tonk (1817), Samthar (1817), Bhopal (1818), Bikaner (1818), Datia (1818), Dewas Senior and Junior (1818), Indore (1818), Jaipur (1818), Jaisalmer (1818), Jodhpur (1818), Kishengarh (1818), Partabgarh (1818), Udaipur (1818), Bundi (1818), Cutch (1819), Sawantwari (1819), Dhar (1819), Sirohi (1823), Bahawalpur (1838), Khairpur (1838), Jhalawar (1838), Kashmir (1846), Kalat (1876).

2 See Lee Warner, *The Native States of India*, pp. 53-57.

with historical fact that when the Indian States came into contact with the British Power, they were independent, each possessed of full sovereignty and of a status which a modern international lawyer would hold to be governed by the rules of international law. In fact, none of the States ever held international status. Nearly all of them were subordinate or tributary to the Mughul empire, the Mahratta supremacy or the Sikh Kingdom, and dependent on them. Some were rescued, others were created, by the British.

We cannot agree that usage in itself is in any way sterile¹. Usage has shaped and developed the relationship between the Paramount Power and the States from the earliest times, almost in some cases, from the date of the treaties themselves. Usage is recited as a source of jurisdiction in the preamble to the Foreign Jurisdiction Act, 1890 (53 and 54 Viet., C. 37), and is recognised in decisions of the Judicial Committee of the Privy Council. Usage and sufferance² have operated in two main directions. In several cases, where no treaty, engagement or sanad exists, usage and sufferance have supplied its place in favour of the States. In all cases usage and sufferance have operated to determine questions on which the treaties, engagements and sanads are silent; they have been a constant factor in the interpretation of these treaties, engagements and *sanads*; and they have thus consolidated the position of the Crown as Paramount Power.

**Validity of
usage and
sufferance**

These important effects of the operation of usage and sufferance were pointed out by the Government

1 The Princes' lawyers stated. "In municipal law usage is of itself sterile; it creates neither rights nor obligations we see no ground upon which there can be imputed to usage between an Indian State and the Crown any different efficacy from that which may be attributed to it by municipal law between individuals."

2 Regarding 'sufferance' the Princes' lawyers observed, "From the legal point of view its efficacy is no greater, and no less, than that of usage, and it is in principle covered by what we have said about usage."

Government of India on 'Paramountcy' (1877)

of India in 1877. "The paramount supremacy of the British Government," it was then said, "is a thing of gradual growth; it has been established partly by conquest; partly by treaty; partly by usage; and for a proper understanding of the relations of the British Government to the Native States, regard must be had to the incidents of this *de facto* supremacy, as well as to treaties and charters in which reciprocal rights and obligations have been recorded, and the circumstances under which those documents were originally framed. In the life of States, as well as of individuals, documentary claims may be set aside by overt acts; and a uniform and long-continued course of practice acquiesced in by the party against whom it tells, whether that party be the British Government or the Native State, must be held to exhibit the relations which in fact subsist between them."

Alleged limitations on 'Paramountcy'

Meaning of "subordinate co-operation"

It is not in accordance with historical fact that paramountcy gives the Crown definite rights and imposes upon it definite duties in respect of certain matters only, viz., those relating to foreign affairs and external and internal security, unless those terms are made to cover all those acts which the Crown through its agents has considered necessary for imperial purposes, for the good government of India as a whole, the good government of individual States, the suppression of barbarous practices, the saving of human life, and for dealing with cases in which rulers have proved unfit for their position. It is not in accordance with historical fact to say that the term "subordinate co-operation" used in many of the treaties is concerned solely with military matters. The term has been used consistently for more than a century in regard to political relations. In these and other respects the opinion of counsel appears to us to ignore a long chapter of historical experience¹.

¹ The Princes' lawyers observed, "The Crown has, by the mere cession to it of paramountcy, acquired no right to control the independent action of any State outside the special field so ceded. Outside the subjects of foreign rela-

What then is the correct view of the relationship between the States and the Paramount Power? It is generally agreed that the States are *sui generis*, that there is no parallel to their position in history, that they are governed by a body of convention and usage not quite like anything in the world. They fall outside both international and ordinary municipal law, but they are governed by rules which form a very special part of the constitutional law of the Empire. Some sixty years ago Sir Henry Maine regarded their status as quasi-international. Professor Westlake regarded the rules which regulate their status as part of the constitutional law of the Empire. A similar view was expressed by Sir Frederick Pollock, who held that in cases of doubtful interpretation the analogy of international law might be found useful and persuasive.

Views of
Maine,
Westlake
and Pollock

In a well-known passage in his minute in the Kathiawar case (1864) Sir Henry Maine refers to the relationship of divided sovereignty between the Paramount Power and the States. "Sovereignty," he wrote, "is a term which, in international law, indicates a well ascertained assemblage of separate powers or privileges. The rights which form part of the aggregate are specifically named by the publicists who distinguish them as the right to make war and peace, the right to administer civil and criminal justice, the right to legislate and so forth. A sovereign who possesses the whole of this aggregate of rights is called an independent sovereign; but there is not, nor has there ever been, anything

Maine's
view on
division of
sovereignty
between
States and
Paramount
Power

tions and the external and internal security of the State, each State remains free to guide its actions by considerations of self-interest, and to make what bargain with the Government of India it may choose. There is no legal or constitutional power in the Government of India, or its officers, nor in the Viceroy or the Political Department, to insist on any agreement being entered into by a State. Nor is there any legal basis for a claim that any State is under a duty to co-operate in matters outside the field of paramountcy with British India. The phrase 'subordinate co-operation' which appears in some treaties (e.g., the Udaipur treaty of 1816) is concerned, in our opinion, solely with military matters".

in international law to prevent some of those rights being lodged with one possessor, and some with another. Sovereignty has always been regarded as divisible. It may perhaps be worth observing that, according to the more precise language of modern publicists, 'Sovereignty' is divisible, but independence is not. Although the expression 'partial independence' may be popularly used, it is technically incorrect. Accordingly there may be found in India every shade and variety of sovereignty, but there is only one independent sovereign—the British Government."

**Present
character of
'Paramountcy'**

We are concerned with the relationship between the Paramount Power and the States as it exists to-day, the product of change and growth. It depends, as we have already said, upon treaties, engagements and sanads supplemented by usage and sufferance and by decisions of the Government of India and the Secretary of State embodied in political practice. As a general proposition, and by way of illustration rather than of definition, the activities of the Paramount Power may be considered under three main heads: (1) external affairs; (2) defence and protection; (3) intervention.

**Paramount
Power and
external
affairs**

The Indian States have no international life. They cannot make peace or war or negotiate or communicate with foreign States. This right of the Paramount Power to represent the States in international affairs, which has been recognised by the Legislature, depends partly on treaties, but to a greater extent on usage. That this right of the Paramount Power to represent the States in international affairs carries with it the duty of protecting the subjects of those States while residing or travelling abroad, is also recognised by the Legislature. For international purposes State territory is in the same position as British territory, and State subjects are in the same position as British subjects. The rights and duties thus assumed by the Paramount Power carry with them other consequential rights and duties. Foreign States will hold the Paramount

Power responsible if an international obligation is broken by an Indian State. Therefore the Princes co-operate with the Paramount Power to give effect to the international obligations entered into by the Paramount Power; they co-operate with the Paramount Power to fulfil its obligations of neutrality; they help to enforce the duties of the Paramount Power in relation to the suppression of the slave trade. Since a foreign power will hold the Paramount Power responsible for injuries to its subjects committed in an Indian State, the Paramount Power is under obligation to see that those subjects are fairly treated. Of these duties Professor Westlake very truly says that they are owed by the States to Great Britain "as the managing representative of the Empire as a whole," and that they consist in helping Great Britain to perform international duties which are owed by her in that character. On the other hand, the Paramount Power, when making treaties, will, in view of special circumstances existing in the Indian States, insert reservations in order to meet these special circumstances. In all such cases there is, in practice, no difference between the States and the Paramount Power, but the States ask that they may be consulted, where possible, in advance before they are committed to action. This request is, in our opinion, eminently reasonable and should be accepted.

States
co-operate
with the
Paramount
Power in
fulfilling
international
obligations.

The
Paramount
Power
should
consult
States
before
undertaking
international
obligations.

Until quite recently the Paramount Power acted for the States not only in their relations with foreign countries, but also in all their relations with one another. During the present century circumstances have combined to lead to greater intercommunication between the States. But they cannot cede, sell, exchange or part with their territories to other States without the approval of the Paramount Power, nor without that approval can they settle inter-statal disputes. "As we do not allow the States to go to war with one another we claim the right as a consequence, and undertake the duty, of preventing those quarrels and grievances which among really independent

Paramount
Power and
inter-State
relations

Maine's
view

powers would lead to international conflict." This principle, stated by Sir Henry Maine in 1868, still holds good.

**Paramount
Power and
problem of
defence**

The Paramount Power is responsible for the defence of both British India and the Indian States and, as such, has the final voice in all matters connected with defence, including establishments, war material, communications, etc. It must defend both these separate parts of India against foes, foreign and domestic. It owes this duty to all the Indian States alike. Some of the States contribute in different ways to the cost of this defence by the payment of tribute, by the assignment of lands, by the maintenance of Indian States Forces. All the States rallied to the defence of the Empire during the Great War, and put all their resources at the disposal of the Government. But, whether or not a State makes a contribution to the cost of defence, the Paramount Power is under a duty to protect the States. It follows from this duty of protection, first, that the British Government is bound to do everything really necessary for the common defence and the defence of the States; secondly, that the States should co-operate by permitting everything to be done that the British Government determines to be necessary for the efficient discharge of that duty; thirdly, that they should co-operate by abstaining from every course of action that may be declared dangerous to the common safety or the safety of other States. These obligations are generally accepted and the States work together with the British Government to their utmost ability. It follows that the Paramount Power should have means of securing what is necessary for strategical purposes in regard to roads, railways, aviation, posts, telegraphs, telephones, and wireless cantonments, forts, passage of troops and the supply of arms and ammunition.

**States
should
co-operate
with
Paramount
Power in
dealing
with
defence
matters.**

The duty of the Paramount Power to protect the States against rebellion or insurrection is derived from the clauses of treaties and *sanads*, from usage, and from the promise of the King-Emperor to main-

tain unimpaired the privileges, rights and dignities of the Princes. This duty imposes on the Paramount Power correlative obligations in cases where its intervention is asked for or has become necessary. The guarantee to protect a Prince against insurrection carries with it an obligation to enquire into the causes of the insurrection and to demand that the Prince shall remedy legitimate grievances, and an obligation to prescribe the measures necessary to this result.

**Duty of
Paramount
Power in
relation to
internal
rebellions in
States**

The promise of the King-Emperor to maintain unimpaired the privileges, rights and dignities of the Princes carries with it a duty to protect the Prince against attempts to eliminate him, and to substitute another form of government. If these attempts were due to mis-government on the part of the Prince, protection would only be given on the conditions set out in the preceding paragraph. If they were due, not to misgovernment, but to a widespread popular demand for change, the Paramount Power would be bound to maintain the rights, privileges and dignity of the Prince; but it would also be bound to suggest such measures as would satisfy this demand without eliminating the Prince. No such case has yet arisen, or is likely to arise if the Prince's rule is just and efficient, and in particular if the advice given by His Excellency Lord Irwin to the Princes, and accepted in principle by their Chamber, is adopted in regard to a fixed privy purse, security of tenure in the public services and an independent Judiciary.

**'Privileges,
rights and
dignities'
of Princes
to be
maintained
unimpaired
by
Paramount
Power**

**Paramount
Power
should
respond to
popular
demand
for change**

The history of intervention has already been described. Intervention may take place for the benefit of the Prince, of the State, of India as a whole.

Lord Canning's adoption *sanads* of 1862 recited the desire of the Crown that "the Governments of the several Princes and Chiefs in India who now govern their territories should be perpetuated, and that the representation and dignity of their houses should be continued." In order to secure the fulfilment of this desire the Paramount Power has assum-

**Paramount
Power's
control
over
succession
in States**

**View of
British
Government
in 1891**

ed various obligations in respect to matters connected with succession to the houses of the Ruling Princes and Chiefs. In the first place, it was laid down in 1891 that "it is the right and the duty of the British Government to settle successions in subordinate Native States. Every succession must be recognised by the British Government, and no succession is valid until recognition has been given." In 1917, however, this view of the position was modified and in a "Memorandum on the ceremonies connected with successions" issued by the Government of India, it was laid down that where there is a natural heir in the direct line he succeeds as a matter of course and it was arranged that in such cases the recognition of his succession by the King-Emperor should be conveyed by an exchange of formal communications between the Prince and the Viceroy. In the case of a disputed succession, the Paramount Power must decide between the claimants having regard to their relationship, to their personal fitness and to local usage. In the second place, Lord Canning's *sanads* guaranteed to Princes and Chiefs the right, on failure of natural heirs, to adopt a successor in accordance with Hindu or Muhammadan Law. But such adoption in all cases requires the consent of the Paramount Power. In the third place, the Paramount

**View of
British
Government
in 1917**

**Paramount
Power's
duty in
case of
minority of
Princes**

**Usages
and treaties**

Power has, in the case of a minority of a Ruling Prince, very large obligations to provide for the administration of the State, and for the education for the minor. These obligations, obvious and admitted, of the Paramount Power to provide for minorities afford, perhaps, as strong an illustration as any other of the way in which usage springs up naturally to supply what is wanting in the terms of treaties that have grown old. Usage, in fact, lights up the dark places of the treaties.

The conduct of the Prince may force the Paramount Power to intervene both for the benefit of the State and for the benefit of the successors to the Prince. It is bound to intervene in the case of gross misrule; and its intervention may take the form

of 'the deposition of the Prince, the curtailment of his authority or the appointment of an officer to exercise political superintendence or supervision. In all these cases a commission must, under a recent Resolution of the Government of India, be offered, to enquire and report before any action is taken. The Paramount Power will also intervene if the ruler, though not guilty of misrule, has been guilty of disloyalty or has committed or been a party to a serious crime. Similarly it will intervene to suppress barbarous practices, such as sati or infanticide, or to suppress torture and barbarous punishment.

Paramount Power may intervene in case of 'gross misrule,' disloyalty, crime and 'barbarous practices'

The small size of the State may make it difficult for it to perform properly the functions of government. In these cases the Paramount Power must intervene to carry out those functions which the State cannot carry out. The general principle was stated by Sir Henry Maine in 1861, in reference to Kathiawar. He said, "Even if I were compelled to admit that the Kathiawar States are entitled to a larger measure of sovereignty, I should still be prepared to maintain that the Government of India would be justified in interfering to the extent contemplated by the Governor-General. There does not seem to me to be the smallest doubt that if a group of little independent States in the middle of Europe were hastening to utter anarchy, as these Kathiawar States are hastening, the Greater Powers would never hesitate to interfere for their settlement and pacification in spite of their theoretical independence."

Special duty of Paramount Power in case of small States

Maine's view

Most of the rights exercised by the Paramount Power for the benefit of India as a whole refer to those financial and economic matters which fall under the second part of our terms of reference. . . . it is only necessary to note a fact to which due weight has not always been given. It is in respect of these financial and economic matters that the dividing line between State sovereignty and the authority of the Paramount Power runs; and, apart

Financial and economic matters

Paramount Power may intervene 'for the economic good of India as a whole.'

from interferences justifiable on international grounds or necessary for national defence, it is only on the ground that its interference with State sovereignty is for the economic good of India as a whole that the Paramount Power is justified in interposing its authority. It is not justified in interposing its authority to secure economic results which are beneficial only or mainly to British India, in a case in which the economic interests of British India and the States conflict.

Introduction of British jurisdiction in States

Some of the treaties contain clauses providing that British jurisdiction shall not be introduced into the States; and it is the fact that the States are outside the jurisdiction of the British courts, and that British law does not apply to their inhabitants, which is the most distinct and general difference between the States and British India. Nevertheless the Paramount Power has found it necessary, in the interests of India as a whole, to introduce the jurisdiction of its officers in particular cases, such as the case of its troops stationed in cantonments and other special areas in the Indian States, European British subjects, and servants of the Crown in certain circumstances.

Paramountcy must adapt itself to changing circumstances.

These are some of the incidents and illustrations of paramountcy. We have endeavoured, as others before us have endeavoured, to find some formula which will cover the exercise of paramountcy, and we have failed, as others before us have failed, to do so. The reason for such failure is not far to seek. Conditions alter rapidly in a changing world. Imperial necessity and new conditions may at any time raise unexpected situations. Paramountcy must remain paramount; it must fulfil its obligations defining or adapting itself according to the shifting necessities of the time and the progressive development of the States. Nor need the States take alarm at this conclusion. Through paramountcy and paramountcy alone have grown up and flourished those benign relations between the Crown and the Princes on which at all times the States rely. On para-

mountey and paramountcy alone can the States rely or their preservation through the generations that are to come. Through paramountcy is pushed aside the danger of destruction or annexation.

65. THE PRINCES AT THE ROUND TABLE CONFERENCE.

I. Speech of Maharaja of Bikaner, November 17, 1930.

.....The ultimate attainment of Dominion status under the Crown is inherent in the declaration of policy in 1917, and has more recently received authoritative endorsement. Let us hitch our wagon to that star, fully realising.....that in the intervening stage certain safeguards and guarantees are imperatively necessary for the security of the body politic and all parts thereof, but looking straight on. Nothing worth having can be attained without facing some risks. These were taken when Lord Durham laid the foundations for the proud position which Canada enjoys to-day as the premier Dominion in our great Commonwealth, to the mutual benefit of Great Britain and Canada. Similar risks were run when Sir Henry Campbell-Bannerman secured Dominion Status for South Africa with the happiest results.....I am equally convinced that if this Conference will but do the right thing by India, justly and magnanimously, my country will be a willing and contented partner in the Commonwealth.

.....No half-hearted measures, and no tinkering with the constitution will.....meet the situation. Many of our troubles in the past, and our troubles of the present, have arisen from these causes. Moreover when, in response to irresistible demands, some constitutional advance was made, it was often too late; and it wore the appearance of having been conceded with a bad grace and wrested from the British Government. So there never was a time in the history of India and of the Empire when **courageous statesmanship**—**courage in thought, in aim, in constructive statesmanship**—was more needed than now, when the **required**

Ultimate attainment of Dominion Status" supported

Analogy of Canada and South Africa

Courageous statesmanship

great ambitions stirring India are struggling for constitutional expression.....

**Loyalty to
the Crown**

From what standpoint then we of the States approach this great task?..... We are here specially to present the policies of the Indian States. First and foremost in those policies is an unflinching and unqualified loyalty to the Throne and Person of His Majesty the King-Emperor of India.....

**Adhesion
to the
Empire**

Linked with this devotion to the Crown is an unflinching adhesion to the British Commonwealth of Nations.....Our attachment to the Empire or Commonwealth, call it what we may, is no mere matter of sentiment. It is based on the profound conviction that not only can each constituent State reach its full expression within these bonds and under the Crown, but a higher development, politically and economically, than it could attain as an isolated independent unit.

**Treaty
Rights**

Thirdly, we stand without compromise on our treaty rights and all that they involve. Those Treaties are with the British Crown, and obviously cannot be transferred to any other authority without our free agreement and assent. But do not conclude from this that I am one of those people who think that things never change. The States rightly maintain that Treaties concluded in honour and friendship are binding until they may be amended, and they can only be amended by negotiation and honourable agreement on both sides. Nor must it be concluded that we of the Indian States are under the belief that changes in British India will have no reflex action on ourselves and on our relations with our own subjects. The territories of the Indian States are so interwoven with British India, so many of the more enterprising of our traders have business in the new commercial centres on the seaboard.....that we must be influenced by the development of political ideas and institutions beyond our frontiers. But this is our affair. We know our States and our people; we live amongst our own folk and are in

the most intimate contact with their needs and possibilities. We shall know how and when to adjust our system to any changing conditions; but we will do it in our own time and in our own way, free from all external interference.

Question
of reforms
in the
States

Is there anything in adherence to these principles either opposed to, or inconsistent with, the fullest development of India until she takes her equal place as a constituent State in the British Commonwealth with the other Dominions, welded into an indivisible whole under the aegis of the Crown? I say, "No—a thousand times No." It is sometimes said that there are two Indias, British India and the India under the rule of her own Princes. That is true in a political sense; but India is a single geographical unit and we are all members one of another. We, the Princes, are Indians—we have our roots deep down in her historic past, we are racy of the soil. Everything which tends to the honour and prosperity of India has for us a vital concern. Everything which retards her prosperity and shakes the stability of her institutions retards our own growth and lowers our stature. We claim that we are on the side of progress. One of the most welcome signs of the times is the material weakening of the idea that the Princes are opposed to the political growth of British India, and would range themselves—or allow themselves to be arrayed—against the realisation of the just hopes of their fellow-countrymen in British India. We have, therefore, watched with the most sympathetic interest the rise of that passion for an equal position in the eyes of the world, expressed in the desire for Dominion Status, which is the dominant force amongst all thinking Indians to-day.

Two Indias

Princes are
Indians.

Princes not
opposed to
political
progress in
British
India

.....if we are to build well and truly, we must recognise that associated with this geographical unity India is a land of some diversity. Our starting point, therefore, must be a recognition of this diversity; our unity must be sought not in the dead hand of an impossible uniformity but in an associated diver-

Diversity
in India

**Unitary
Government
not
possible**

sity. For these reasons, the establishment of a unitary State, with a sovereign parliament sitting at Delhi, to which the whole people would look in small things as in large, is to my mind impossible. There would be no room in such a constitution for the Indian States; moreover, such a Government would crack under its own imponderability.....

**Federal
Government
recom-
mended**

We of the Indian States are willing to take our part in, and make our contribution to, the greater prosperity and contentment of India as a whole. I am convinced that we can best make that contribution through a federal system of Government composed of the States and British India.....

**Princes
want
'safeguards.'**

As to the question whether, if a Federal Government is devised for India, the Princes and States will enter into association with it, the final answer must obviously depend on the structure of the Government indicated and on other points involved, such, for instance, as certain necessary safeguards—constitutional and fiscal—for the preservation of the rights and interests of the States and their subjects.

**Adhesion to
Federation
must be
voluntary.**

.....But, speaking broadly, the Princes and States realise that an All-India Federation is likely to prove the only satisfactory solution of India's problem..... The Indian Princes will only come into the Federation of their own free will, and on terms which will secure the just rights of their States and subjects.

* * * * *

**Treaty
Rights
infringed**

.....It is an open matter of complaint that our Treaty Rights have been infringed.....it has been publicly admitted by no less an authority than the Viceroy and Governor-General of India that the Treaty Rights of the States have been encroached upon, and that in some cases an arbitrary body of usage and political practice has come into being. The time has passed when issues of this importance can be decided 'ex parte' by any Government. We, therefore, attach the utmost importance to the establishment of a Supreme Court, with full powers to entertain and adjudicate upon all disputes of a justiciable nature as to our rights and obligations

**Need for a
Supreme
Court**

guaranteed under our Treaties.....Next, we claim that in the questions which arise concerning the purely internal affairs of the States their case should not go by default.....The King's Vicegerent in India is even now burdened with many and grievous responsibilities, which will be weighted under the new system of Government.....We think that it will be impossible for any man, however able, amid these grave pre-occupations, to give adequate personal attention to those questions affecting the States which come up for day to day decision, and for which he will be directly responsible to the Crown. For these reasons some of us press for the appointment of an Indian States Council, to work with the Political Secretary and to advise the Viceroy of the day. Thirdly, there will be the need for the classification of those administrative questions which are of common concern to British India and the Indian States. This classification will require the consent of the States.....

Viceroy to be advised by a States Council

Administrative questions affecting States and British India

II. Speech of Mr. Ramsay MacDonald, November 21, 1930.

.....The declaration of the Princes has revolutionised the situation.....The Princes saying what they have said has at once not only opened our vision, not only cheered our hearts, not only let us lift up our eyes and see a glowing horizon, but has simplified our duties. The Princes have given a most substantial contribution in opening up the way to a really united federated India.

Value of the part played by Princes in the Conference

III. Speech of Sir Manubhai Mehta¹, December 23, 1932.

.....It is often pictured that the idea of federation has sprung up in the minds of the Princes only like a mushroom—that it is only of yesterday's growth, but let me remind you.....that it was in 1918 that the great statesmanlike Ruler who now graces the *gadi* of Baroda.....in response to Lord

Federation suggested by Gaikwar of Baroda in 1918

1 Representative of Bikaner.

Princes
consistently
supported
idea of
Federation.

Attitude of
Princes at
R. T. C.

Question of
Para-
mountcy

Chelmsford's request as to what were the lines on which future Reforms should go forward, said that the future of India and the good of the Indian States lay in federation.....Since 1918 the Princes have consistently worked on this theory. In the Montagu-Chelmsford Report the scheme of federation was pictured but for ten years no steps were taken to give effect to this idea of federation by which the Princes were to be given some share in the management of questions of joint concern, such as customs, railways, salt and so on, which are now considered to be federal.....the Princes have been consistently taking a sustained interest in the idea of the development of federation since 1918. When, therefore, in 1930 you were pleased to call the Princes and the British Indians together in a Round Table Conference, and when a generous suggestion came from the British Indians that the Princes should unite in a common federation, His Highness the Maharaja of Bikaner, on behalf of the Princes, gladly accepted the idea, and welcomed the offer of federation as being in the best interests of his mother country.....the Princes made it clear.....that they would gladly enter federation, with two provisos. First, they wanted to know whether they stood on *terra firma* or whether they were standing on what the Maharaja of Bikaner called the shifting sands of expediency. He wanted to know what the rights of the Princes were. The Princes were naturally anxious to know where they stood on the eve of the transfer of control from Whitehall to Delhi, and therefore he wanted to clear up the question of Paramountcy. He asked how far Paramountcy extended, because after the declaration of the Butler Committee that Paramountcy must ever remain Paramount, the doctrine of the ultimate powers of the Government became rather overbearing. It was said that the powers of the Government meant the ultimate or residuary powers, anything undefined, and naturally the Princes became a little alarmed. They wanted some definition to be given of that doctrine of Paramountcy, and I am glad to inform my British Indian colleagues that this will

not stand in the way of the early realisation of Federation, because the Secretary of State and the present Viceroy have been doing their level best to satisfy the Princes in their demand for a satisfactory solution of the Paramountcy question. When the question of Paramountcy is settled, the Princes will naturally carry out their promise of entering into Federation.

The second proviso made by the Princes was 'Safeguards' with regard to their safeguards. They wanted a clear picture; they wanted the picture to be completed before they were asked to come into federation. We are now about to complete the picture.....

for Princes

* * * *

.....The other thing I wanted to remark, Sir, was that whatever you give must lead to a real responsibility at the Centre. The Princes have also made it very clear.....that they are prepared to enter into Federation only with a self-governing India, with a responsible India. They were asked whether they were prepared to come into Federation with a Government that was not fully responsible to the people. They said they were not prepared to come into Federation with an irresponsible Centre.....

Princes want responsible Federal Government.

66. MAHATMA GANDHI ON THE INDIAN PRINCES', 1931-1939.

I. Talk with Mr. H. N. Brailsford in London, - October, 1931.

The Princes are British officers in Indian dress. A Prince is in the same position as a British officer : He has to obey.....we argue that the Princes ought to be transferred to the control of the Indian Government.

"Princes are British officers."

II. 'Harijan', July 9, 1933.

Events seem to have justified the wisdom of the Congress resolution² of non-intervention in the affairs of the States.....By its resolution of non-interfer-

Justification of Haripura Resolution

1 See M. K. Gandhi, *The Indian States' Problem*.

2 See Document No. 67 : Haripura resolution.

ence the Congress put the States people on their inattle, in other words, set in motion the natural forces, . . . , the powers latent in the people themselves. In the few recent instances it has been found that the people having discovered their strength they used it without any aid from outside and won full victory.

III. Articles written in 1939.

Princes are
"an imperial
creation."

Do not Princes stand much on the same footing as the Europeans? Many, if not most, of them are an imperial creation and sustained for imperial interests. The Princes in no way represent their people Does not this British protectorate mean naked imperialism? The Congress is invited to regard the Princes as a minority. British power is the overlord without whom the Princes cannot breathe. They are not free even to see Congressmen, much less to enter into any settlement with them.

* * * *

"Princes
represent
no body but
them-
selves."

..... They (i.e., the Princes) owe their existence to the Paramount Power and have no status independent of it..... they can do nothing good or big without the consent, tacit or implied, of the Paramount Power. They represent nobody but themselves. To invite the Congress to settle with the Princes is the same as inviting it to settle with the Paramount Power.

IV. 'Harijan', December 16, 1939.

Whatever may be said to the contrary I must continue to claim to be a friend and well-wisher of the Princes. For, my picture of free India has a definite place for them¹. And hence it is that I have been drawing attention to the weakness of their position as it exists to-day..... the Princes cannot hold out against millions who have become conscious of their power, whether spiritual or physical.....

1 "I would give them (i.e., the Princes) a fat commission as trustees of their people..... they must work for this commission. They would have the same privileges as the British King enjoys": (*Harijan*, January 15, 1940).

'.....The very word 'Paramountcy' involves the final authority of the Paramount Power. The so-called treaties are not treaties between equals, but conditions and restrictions imposed upon those to whom they are given. They are so many grants made principally or wholly for the consolidation of Paramountcy. Lawyers would no doubt be found who would argue that treaties are solemn pledges which can be enforced by the Princes. How can a dwarf enforce right against a giant ?

Meaning of
"Paramountcy"

I hold that, in the nature of things, it is impossible for the Congress to negotiate with the Princes directly. When the time has come, it will be found that the Paramount Power will have negotiated on their behalf with the Congress or whoever can deliver the goods. Princes must not be used or allowed to impede the march of India to freedom, even as the I.C.S., a British creation, must not be allowed to do so. Both are bulwarks of the Empire, and both will either be found to yield willing assistance to free India or will be disbanded.....

"Princes cannot impede march of India to freedom."

67. INDIAN NATIONAL CONGRESS ON THE INDIAN STATES, 1936-1939.

I. Resolution, Lucknow Session, 1936.

This Congress . . . desires to make it clear that, in its opinion, the people of the States should have the same right of self-determination as those of the rest of India, and that the Congress stands for the same political, civil and democratic liberties for every part of India. The Congress, however, desires to point out that the struggle for liberty within the States has, in the very nature of things, to be carried on by the people of the States themselves.

States' people should have the same right as people of British India.

II. Resolution, Haripura Session, 1938.

The Congress stands for the same political, social and economic freedom in the States as in the rest of

**Congress
wants
democratic
freedom for
States.**

**States
should join
Indian
Federation
as 'free
units.'**

**Why
Congress
cannot
work
within
States**

**Struggle for
freedom in
States
should be
fought by
the people
of the States
with the
moral
support of
the
Congress.**

India and considers the States as integral parts of India which cannot be separated. The *Purna Swaraj* or complete independence, which is the objective of the Congress, is for the whole of India inclusive of the States, for the integrity and unity of India must be maintained in freedom as it has been maintained in subjection. The only kind of Federation that can be acceptable to the Congress is one in which the States participate as free units, enjoying the same measure of democratic freedom as the rest of India. The Congress, therefore, stands for full responsible government and the guarantee of civil liberty in the States, and deplors the present backward conditions and utter lack of freedom and suppression of civil liberties in many of these States.

The Congress considers it its right and privilege to work for the attainment of this objective in the States. But, under existing circumstances, the Congress is not in a position to work effectively to this end within the States, and numerous limitations and restrictions imposed by the Rulers or by British authority working through them, hamper its activities. The hope and assurance which its name and great prestige raise in the minds of the people of the States find no immediate fulfilment, and disillusion results. It is not in consonance with the dignity of the Congress to have local committees which cannot function effectively, or to tolerate indignity to the National Flag. The inability of the Congress to give protection or effective help, when hopes have been raised, produces helplessness in the people of the States and hinders the development of their movement for freedom.

In view of the different conditions prevailing in the States and the rest of India, the general policy of the Congress is often unsuited to the States and may result in preventing or hampering the natural growth of a freedom movement in a State. Such movements are likely to develop more rapidly and to have a broader basis, if they draw their strength from the people of the State, produce self-reliance in

them, and are in tune with the conditions prevailing there, and do not rely on extraneous help and assistance or on the prestige of the Congress name. The Congress welcomes such movements, but in the nature of things and under present conditions, the burden of carrying on the struggle for freedom must fall on the people of the States. The Congress will always extend its goodwill and support to such struggles carried on in a peaceful and legitimate manner, but that organizational help will inevitably be, under existing conditions, moral support and sympathy. Individual Congressmen, however, will be free to render further assistance in their personal capacities. In this way the struggle can develop without committing the Congress organization, and thus unhindered by external considerations.

The Congress therefore directs that, for the present, Congress Committees in the States shall function under the direction and control of the Congress Working Committee and shall not engage in the name and under the auspices of the Congress. Internal struggles of the people of the States must not be undertaken in the name of the Congress. For this purpose independent organizations should be started and continued where they exist already within the States.

No movement in States to be launched in the name of the Congress

The Congress desires to assure the people of the States of its solidarity with them and of its active and vigilant interest in and sympathy with their movement for freedom. It trusts that the day of their deliverance is not far distant.

III. Resolution of the Working Committee, December, 1938.

The Working Committee welcome the awakening of the people of the Indian States in many parts of the country and consider this as a hopeful prelude to the larger freedom, comprising the whole of India, for which the Congress has laboured. The Committee support the demand for civil liberty and responsible

Awakening of the people of States

government under the aegis of the Rulers in the States and express their solidarity with these movements for freedom and self-expression

**Explanation
and
justification
of Haripura
resolution**

The Committee desire to draw attention afresh to the resolution of the Haripura Congress which defines Congress policy in regard to the States. While it is the right and privilege of the Congress to work for the attainment of civil liberty and responsible government in the States, existing circumstances impose certain limitations on this work, and considerations of prudence prevent the Congress from interfering organisationally and directly in the internal struggles of the States. This policy was conceived in the best interests of the people, to enable them to develop self-reliance and strength. It was also intended as a measure of the goodwill of the Congress towards the States and of its hope that the Rulers, of their own accord, would recognise the spirit of the times and satisfy the just aspirations of their people. But this was never conceived as an obligation. The Congress has always reserved the right, as it is its duty, to guide the people of the States and lend them its influence. With the great awakening that is taking place among the people of the States, there must be an increasing identification of the Congress with the States' people.

**"Increasing
identifica-
tion of
Congress
with States'
people"**

The policy laid down by the Haripura Congress, which has been so abundantly justified, must continue to be pursued

IV. Resolution, Tripuri Session, 1939.

**Justification
of Haripura
Resolution**

The Congress is of opinion that the resolution of the Haripura session of the Congress relating to the States has answered the expectations raised by it and has justified itself by encouraging the people of the States to organize themselves and conduct their own movements for freedom. The Haripura policy was conceived in the best interests of the people in order to enable them to develop self-reliance and strength. This policy was dictated by

circumstances and by a recognition of the limitations inherent in the circumstances, but it was never conceived as an obligation. The Congress has always possessed the right, as it is its duty, to guide the people of the States and lead them with its influence. The great awakening that is taking place among the people of the States may lead to a relaxation or to the complete removal of the restraint which the Congress imposed upon itself, thus resulting in an ever-increasing identification of the Congress with the States people

The Congress desires to reiterate that its objective, Complete Independence, is for the whole of India, inclusive of the States, which are integral parts of India, which cannot be separated, and which must have the same measures of political, social and economic freedom as the rest of India.

Congress
objecti
Complete
Independence—is
for the
whole of
India,
including
the States.

68. LORD LINLITHGOW ON THE INDIAN STATES, 1937-1939.

I. Speech¹, February 14, 1937.

My distinguished predecessor Lord Willingdon informed Your Highness in 1935 of the advance that had up to that time been made in the policy of bringing all the Indian States into direct relations with the Government of India. That process has recently been completed . . . the change is one that is demanded alike by logic and the force of circumstances, altered as they are by the advent of new constitutional conditions in India.

All States
brought
into direct
relations
with
Government
of India

II. Speech², December 19, 1938.

. The States are as essential an element in a Federation of India as are the Provinces of British India. The unity of India is as dear a thing to them as it is to British India. It was with distinguished leaders of the States that the Federal ideal in its

Federal
ideal
originated
with
Princes.

1 At the Chamber of Princes.

2 At the Associated Chambers of Commerce, Calcutta.

Princes free
to decide
about
joining
Federation

present form originated; and their contribution to the elaboration of the Federal ideal has in the past been material. The decision as to their further contribution must be for them and for them alone to make. No pressure to take a decision in a particular sense will be brought upon the Rulers of the Indian States by His Majesty's Government or by me. Indeed, this matter has throughout been approached in full appreciation of the responsibility which falls upon the individual Ruler who has to take a decision of such momentous consequence to his dynasty and his State

III. Speech¹, March 1, 1939.

Provision
should be
made for
'ventilation
of legiti-
mate
grievances.'

It is in these days of vital importance not only that administration should be conducted on sound and up-to-date lines, but that adequate provision should exist for the ventilation of legitimate grievances and for bringing to the notice of the Government of the State the wants and the suggestions of its subjects

IV. Speech², March 4, 1939.

Constitu-
tional deve-
lopment in
States
should be
left to the
discretion
of the
Rulers.

. . . . I have no doubt Your Highness will continue to ensure that your people are given all due opportunities of bringing their wants and their troubles to the notice of your Government as has been made clear by the pronouncements recently made in Parliament on behalf of His Majesty's Government and by myself on various public occasions, the adoption or development of the particular form of constitution best suited to the needs of his people and his State is a matter primarily and essentially for the Ruler himself, and one the decision in regard to which must be left to his own wisdom and his own foresight.

V. Speech³, March 13, 1939.

it is more than ever essential in present conditions that the authorities of the Indian

1 At Jodhpur.

2 At Udaipur.

3 At the Chamber of Princes.

States should without exception make it their constant care to watch for and to remedy any legitimate grievances that may exist in the administrative field it is, equally, as clearly in the interests of all Rulers as it is their plain and manifest duty, to ensure by their own close personal interest in the affairs of their States, in the work of their officials, and in the daily life of their subjects, that those subjects have cause for content, that they are not allowed to suffer undue exactions either on behalf of the State itself or at the call of unworthy officials, and that all genuine grievances receive prompt and active consideration. It goes without saying that an effective machinery by which the authorities of the States can satisfy themselves that all such complaints can readily reach the ears of the Durbar is an essential necessity in present conditions; and it is equally essential that the peoples of the States should feel assured that their wants, their difficulties, and their representations will receive the fullest attention and the fullest sympathy.¹

Plea for
benevolent
administra-
tion

. the decision as to the constitution best suited to the needs of his people and his State rests with the Ruler himself to take, and . . . no pressure will be brought to bear on him in this respect by the Paramount Power. Nor will any obstruction be placed in his way by the Paramount Power should he wish to give effect to constitutional advances consistent with his Treaty obligations

Attitude of
Paramount
Power to
reforms in
States

In no case is the need for co-operation and combination more patent, more pronounced, and more immediate than in the case of the smaller States. Those States whose resources are so limited as virtually to preclude them individually from pro-

Small States
should
combine 'in
the matter
of adminis-
trative
services.'

1 "With regard to administrative as distinct from constitutional reform pressure was directly exerted on the Princes".
—Coupland, *The Constitutional Problem in India*, Part II,
p 169.

viding for the requirements of their people in accordance with modern standards have indeed no other practical alternative before them. I would take this opportunity to impress upon the Rulers of such States, with all the emphasis at my command, the wisdom of taking the earliest possible steps to combine with their neighbours in the matter of administrative services so far as this is practicable

VI. Speech¹, August 21, 1939.

**Princes free
to decide
whether
they will
join Federa-
tion or not**

Let me say how fully conscious I am of the onerous nature of the decision (on the question of joining the proposed Federation) which it falls to the Princes to take at the present juncture. The choice is the free choice of each individual Ruler, and it is for him, and for him alone, to make up his own mind as to what decision he wishes to take I have frankly been surprised to learn that the suggestion has been made in some quarters that my officers have been endeavouring to bring pressure to bear on Their Excellencies as to the course which they should adopt. So far as I know there is no foundation whatever for that allegation

* * * *

**Federal
scheme not
opposed to
"Imperial
interests"**

There is one point which I ought in fairness to mention That is the suggestion that a Prince who rejects out of hand the federal offer will be exhibiting by his action his loyalty to the Crown. Nothing could be a more fantastic or a more improper suggestion The suggestion has equally been made to me that "Imperial interests" were likely to suffer injury from the Federal scheme. Your Highnesses need no assurance from me that His Majesty's Government have all relevant considerations of that order before them to-day, as indeed they, and Parliament, had in approving this scheme.

¹ Address to the Standing Committee of the Chamber of Princes.

69. ADMINISTRATION OF INDIAN STATES.

[The following extracts are taken from a statement by the Chancellor of the Chamber of Princes on March 17, 1942. It throws some light on the internal administration of the States which were represented on the Chamber of Princes; but the reference to "association of . . . subjects with their administrations" should not be taken to imply even partial responsible government.]

The laws of the States that are members of this Chamber have been modelled generally on the lines of British Indian laws. The criminal, civil and pro- **Laws** cedural law enforced in the States is almost identical with that obtained in British India. 91 per cent. of the population of States in this Chamber have already got the benefit of High Courts; in 97 per cent. of these the Rulers exercise only the prerogative of **Indiciary** mercy in judicial matters. Judicial officials generally possess sufficient legal qualifications or judicial experience, and in many cases minimum qualifications have been prescribed for the appointment of judicial officers. In certain groups the relatively smaller States have been examining or have adopted suitable schemes for common judges of the High Court.

The general incidence of taxation in the States has also been compared with, and found lower than, **Taxation** that of the adjoining British Indian Provinces.

Primary education is free almost throughout the territories of the States. In some cases even higher education is paid for by the State. Many States **Education** maintain colleges for post-Matric instruction for which stipends are liberally provided for the poor students.

Modern dispensaries exist in every Chamber State, equipped according to the varying needs and **Medical aid** conditions of the States. Some of them compare favourably with the best available medical aid in British India.

Many States have extensive irrigation works, **Irrigation** canals, tanks, *bunds* and big dams constructed at State expense for the benefit of their subjects.

Relief Assistance given by the States in distress or famine has been worthy of their highest traditions.

Agriculture and industry Agricultural and industrial organisation on modern lines has been a prominent feature of the recent policy of many States.

Local Bodies 90.5 per cent. of the population of our States possess local bodies with non-official majorities. States with 72 per cent. of the population have got Legislative Assemblies, out of which 35.3 per cent. have a majority of elected members and 5 per cent. have equality of elected and nominated members. States representing more than half of our total population have recently reviewed and enlarged the scope of association of their subjects with their administrations.¹

Legislatures

We do not claim perfection for all the States administrations; at the same time the aforesaid statement of facts, based on authentic information, will show to all fair-minded persons that the Indian States are not anachronisms in the conception of a progressive State, and that our administrations are based on a rule of law associated with growing beneficent activities.

1 In Mysore there was a bicameral legislature consisting of a Representative Assembly and a Legislative Council, the latter enjoying wider powers than the former. Two Ministers were selected from the non-official members of the legislature. Constitutions of Baroda, Gwalior and Indore were framed on the same model, but only in Baroda was provision made for non-official Ministers. In Cochin and Rajkot the Legislative Council, of which two-thirds were elected, was given legislative and financial control over all but some 'reserved subjects' (including law and order). In Kashmir and Hyderabad there were Assemblies with elected majorities, which were empowered to discuss legislation and the budget. Only the Ruler of Aundh "promulgated an original and distinctly liberal constitution setting up an indirectly elected Legislative Assembly with full control over half the revenue." See Coupland, *The Constitutional Problem in India*, Part II, pp. 176-177.

APPENDIX B

70. CONSTITUTION OF THE INDIAN NATIONAL CONGRESS.¹

Article I. The object of the Indian National Congress is the attainment of *Swarajya*² by the people of India by all legitimate and peaceful means. Object

(a) The Indian National Congress shall ordinarily meet once every year. . . . Annual Meeting

* * * *

Article II. Every delegate elected to the Indian National Congress shall be deemed to have expressed his or her acceptance of the object of the Congress and methods of its attainment as laid down in the foregoing Article, and shall be bound by the Constitution and the Rules of the Congress.

Article III. The Indian National Congress Organisation shall consist of the following:—(a) The Indian National Congress. (b) The All-India Congress Committee. (c) Provincial Congress Committees. (d) District Congress Committees. (e) Sub-Divisional, Taluqa or Tahsil, Fırka or other local Congress Committees. (f) Such other Committees outside India as may from time to time be recognised by the Congress in this behalf Constituent Committees

* * * *

Article IV. No person shall be eligible to be a member of any of the organisations referred to in the foregoing Article, unless he or she has attained the age of 18 and expressed in writing his or her acceptance of the object and the methods as laid down in Article I of this Constitution and of the Rules of the Congress. Membership

¹ Adopted at Nagpur session (1921) and amended at Cocanada session (1923). It was further amended by the Bombay session (June, 1939) of the All-India Congress Committee.

² The words "*Purna Swaraj* (Complete Independence)" were substituted in the amendment of 1939.

**Provincial
Congress
Committee**

Article VI. (a) There shall be a Provincial Congress Committee in and for each of the Provinces¹.....

(b) Each Provincial Congress Committee shall organise District and other Committees referred to in Article III. . . .

(c) Each Provincial Congress Committee shall consist of representatives elected annually by the members of the Congress organisations in the province. . . .

Article VII. Every person not disqualified under Article IV and paying a subscription of four annas per year shall be entitled to become a member of any primary organisation controlled by the Provincial Congress Committee. . . .

Membership

Article VIII. Each Provincial Congress Committee shall be responsible for the election of delegates to the Congress.

No one shall be qualified for election who is not a member of any Congress organisation.

The number of delegates shall be not more than one for every 50,000 or its fraction of the inhabitants of the Province of its jurisdiction, including the Indian States therein, . . . provided, however, that the inclusion of Indian States in the electorate shall not be taken to include any interference by the Congress with the internal affairs of such States.

* * * *

**Election of
President**

Article XVI. The several Provincial Congress Committees shall . . . suggest to the Reception Committee the names of persons who are in their opinion eligible for the Presidentship of the Congress, and the Reception Committee shall . . . submit to all the Provincial Committees the names as suggested for

1 There were 20 Provinces : (1) Ajmer-Merwara and Rajputana; (2) Andhra; (3) Assam; (4) Bihar; (5) Bengal and Surma Valley; (6) Derar; (7) Burma; (8) C.P. (Marathi); (9) C.P. (Hindustani); (10) City of Bombay; (11) Delhi; (12) Gujarat; (13) Karnatak; (14) Kerala; (15) Maharashtra; (16) Punjab and N.W.F.P.; (17) Sind; (18) Tamil Nadu; (19) U.P.; (20) Utkal.

their final recommendation, provided that such final recommendation will be of any one but not more of such names, and the Reception Committee shall . . . meet . . . to consider such recommendations. If the person recommended by a majority of the Provincial Congress Committees is adopted by a majority of the members of the Reception Committee present at a special meeting called for the purpose, that person shall be the President of the next Congress. If, however, the Reception Committee is unable to accept the President recommended by the Provincial Congress Committees, or in case of emergency by resignation, death or otherwise of the President elected in this manner, the matter shall forthwith be referred by it to the All-India Congress Committee . . . provided that in no case the person so elected as President shall belong to the Province in which the Congress is to be held.

* * *

Article XIX. The All-India Congress Committee shall consist of 350 members, exclusive of *ex officio* members.

All-India
Congress
Committee

* * *

Each Provincial Congress Committee shall elect the allotted number of members of the All-India Congress Committee from among the members of the Congress Committees within its jurisdiction.

* * *

Article XXI. The All-India Congress Committee shall be the Committee of the Congress to carry out the programme of work laid down by the Congress from year to year and deal with all new matters that may arise during the year . . .

Article XXIV. The All-India Congress Committee shall . . . elect 9 members who shall, with the President, General Secretaries and Treasurers, be the Working Committee of the Congress and the executive authority responsible to the All-India Congress Committee in all matters.

Working
Committee

* * *

INDEX

[This *Index* covers the documents only, including documents in Appendices ; it does not cover *Introduction* and *Notes*.]

Acts :

Government of India Act, 1919
—text, 31-52; differences with
Montagu-Chelmsford Report,
29-31; Central and Provincial
Subjects under, 53-65, 124-131;
Montagu on, 65-69; Congress
on, 77-96.

Government of India Act, 1935
—text, 262-320; Sir Samuel
Hoare on, 238-254; Mr. Attlee
on, 254-262. Congress on, 225-
228, 232-238, 325-327; Lord
Linlithgow on, 329-346, 348-349.

Ahmad, Sir Syed, 100-102.

Aiyangar, S. Srinivasa, 91-96

Ansari, M. A., 159-160.

Attlee, Clement, on Act of 1935,
254-262.

B

Bikaner, Maharaja of, on Indian
States, 457-461.

Birkenhead, Lord, 144.

Butler Committee, on Chamber
of Princes, 418-419; on Para-
mountcy, 443-457.

C

Canning, Lord, 444-445, 453.

Central Legislature under Act of
1919, 116-124, 155-156, 162.

Central and Provincial Govern-
ments—relations under Act of
1919, 124-131.

Chamber of Princes, 415-419.

Chelmsford, Lord, 84.

Communal Award, Sir Samuel
Hoare on, 198, 253; Ramsay
MacDonald on, 199-204; modi-
fied by Poona Pact, 204-205;
Congress on, 210-213; Mr.
Jinnah on, 228-229.

Communal Electorates, Montagu
Chelmsford Report on, 12-17;
Maulana Mohammad Ali on,
104-106; Government of India
on, 136-146; Lord Birkenhead

on, 144; Nehru Committee on,
174-175. Congress on, 206-213.
See also Communal Award.

Congress, on Montagu-Chelmsford
Report, 22-24; on Montagu-
Chelmsford Reforms, 77-98; and
Muslims, 98-106, 206-213; on
Simon Commission, 158-160; on
goal of independence, 179-187;
on First Round Table Confer-
ence, 188-189; on Joint Parlia-
mentary Committee Report, 225-
228; on Reforms of 1935, 232-
238, 325-327, 346-347; Mr. Jin-
nah's charges against, 351-356;
on war, 355-367; resignation of
Ministries, 363. on Indian
States, 465-469; Constitution of,
475-477.

Constituent Assembly, Congress
on, 325, 366-367; Mahatma
Gandhi on, 391-394; Mr. Jinnah
on, 353-354, 401-404.

Crewe Committee, on 'Home'
administration of Indian affairs,
69-77.

D

Das, C. R., on Reforms of 1919,
85-91.

Declaration of August, 1917—text,
2-3; Sir Malcolm Hailey on,
148-149; Nehru Report on, 177;
Lord Irwin on, 177-179; Sir
Samuel Hoare on, 252-253; Mr.
Attlee on, 254-256.

Desai, Bhulabhai, on Reforms of
1935, 225-228.

Dominion Status, Pandit Madan
Mohan Malaviya on, 82; Sir
Malcolm Hailey on, 149; Nehru
Malcolm Hailey on, 149; Nehru
Committee on, 170; Pandit
Motilal Nehru on, 181, 183-184;
Pandit Jawaharlal Nehru on
(1929), 185-186; Sir Samuel
Hoare on, 252-253; Mr. Attlee
on, 254-256.

Dufferin, Lord; 12.

Dyarchy, Montagu-Chelmsford Report on, 6-12; under Act of 1919, 33-36; Congress on, 88-95; Majority Report of Muddiman Committee on, 106-113; Minority Report of Muddiman Committee on, 114-115; Simon Commission on, 163-169.

F

Federation, Joint Parliamentary Committee on, 213-220; Bhulabhai Desai on, 227; Mr. Jinnah on, 230-231; Dr. Rajendra Prasad on, 238; Sir Samuel Hoare on, 238-240; under Act of 1935, 263-278; Lord Linlithgow on, 375, 469-470, 472; Nehru Committee on, 432-433.

G

Gandhi, M. K., on *Swarajya* (1920), 179; Presidential address at Belgaum Congress, 180; Speech at Second Round Table Conference, 189-197; on Princes, 189, 196-197, 463-465; on position of Ministers under Act of 1935, 335-336, 347; on Communal Electorates, 204-205, 207-210; on Constituent Assembly, 391-394.

H

Hailey, Sir Malcolm, on Reforms (1924), 148-150.

Hoare, Sir Samuel, on Round Table Conference, 197-199; on Bill of 1935, 238-254.

I

Indian Civil Service, 25, 50-52, 93, 132, 148, 235-236, 244-245, 304-307, 322-323.

Indian States, 3, 130, 148-150, 153, 174, 178, 189, 198-197, 230, 238, 249, 258; Joint Parliamentary Committee on, 215-220; under Act of 1935, 263-265, 296-299, 309, 323; Montagu-Chelmsford Report on, 405-411; and Round Table Conference, 457-463; Mahatma Gandhi on, 189,

196-197, 463-465; Congress on, 453-459; administration of, 473-474.

Indian States Enquiry Committee —See Butler Committee.

Instrument of Instructions under Act of 1919, 8, 96, 154; under Act of 1935, 247-248, 269-270, 282, 321-325.

Irwin, Lord, on relations between Central Government and Central Legislature, 155-156; on Parliamentary supremacy, 156-157; on political goal of India, 175-179.

J

Jinnah, M. A., on Dyarchy, 114-115; on Communal Electorates (1927), 145; on Joint Parliamentary Committee Report, 228-232; on Communal Award, 228-229; on Muslim claims (1937-38), 349-356; charges against Congress (1937-38), 351-356; on "Deliverance Day" (1939), 394-401; on Constituent Assembly, 401-404.

Joint Parliamentary Committee, on Federation, 213-220; on Provincial Autonomy, 220-222; on relations between Governor and Ministers, 222-224; Indian Legislative Assembly debate on report of, 225-232.

K

Keith, Sir A. B., on Indian States, 436.

L

Lansdowne, Lord, 12.

Legislative Lists under Act of 1935, 309-320.

Linlithgow, Lord, on relations between Governor and Ministers, 329-346; on Provincial Autonomy, 348-349; on war, 371-382, 389-391; on Indian States, 469-472.

M

MacDonald, Ramsay, on Communal Award, 199-204; on Indian States, 461.

Mahe, Sir Henry, on Indian States, 449-452.

Malaviya, Pandit Madan Mohan, on Reforms of 1919, 82-83.

Mehta, Sir Manubhai, on Indian States, 461-463.

Minto, Lord, 12.

Mohammad Ali, Maulana, on Congress and Muslims, 98-106.

Montagu, Edwin, Declaration of August, 1917, 2-3; on Act of 1919, 65-69.

Mont-Ford Report, on goal of political evolution of India, 3-6; on Dyarchy, 6-12; on Communal Electorates, 12-17; on devolution to Provincial Governments, 17-22; Government of India on, 22-29; Congress on, 22-24; Local Governments on, 26-27; differences with Act of 1919, 29-31; on Indian States, 405-411.

Muddiman Committee—See Reforms Enquiry Committee.

Muslim League, foundation of, 104; demand for Communal Electorates, 143-144; charges against Congress, 351-356; on war, 367-371.

N

"National Demand", Indian Legislative Assembly on (1924), 147-155.

Nehru Committee, recommendations of, 170-175; on Indian States, 419-434.

Nehru, Jawaharlal, on Reforms of 1919, 97-98; Presidential Address at Lahore Congress (1929), 184-186.

Nehru, Motilal, on Reforms of 1919, 84-85; on "National Demand" (1924), 150-155; Presidential Address at Calcutta Congress (1928), 181-184.

Nizam, Lord Reading's letter to, 411-415, 422-423.

P

Poona Pact, 204-205.

Provincial Autonomy, Joint Parliamentary Committee on, 213, Bhulabhai Desai on, 228; Mr. Jinnah on, 231-232; Dr. Rajendra Prasad on, 233-237; Sir Samuel Hoare on, 240-243; under Act of 1935, 279-290; Lord Linlithgow on, 348-349, 374; Lord Zetland on, 387.

R

Rajendra Prasad, on Reforms of 1935, 232-238.

Reading, Lord, letter to Nizam, 411-415, 422-423.

Reforms Enquiry Committee, Reports on Dyarchy, 106-115.

Round Table Conference, Congress on First Session of, 188-189; Mahatma Gandhi's speech at Second Session of, 189-197; work done by, 197-199; and Indian States, 457-463.

S

Sapru, Sir T. B., 197.

Scott, Sir Leslie, on Indian States, 424-429, 434-435, 445-448.

Secretary of State, under Act of 1919, 49-50; Crewe Committee on, 71-77; relations of, with Government of India, under Act of 1919, 131-136; Simon Commission on, 160-161; under Act of 1935, 270, 307-309.

Simon Commission, on differences between Montagu-Chelmsford Report and Act of 1919, 29-31; on Central and Provincial subjects under Act of 1919, 53-65; Congress on, 158-160; on relations between Secretary of State and Government of India, 160-161; on influence of Central Legislature on Government of India, 162; on Governor-General's Executive Council, 162-163; on Dyarchy, 163-169.

